

Jennifer Nash: ...at my discretion, what I have decided to do is to limit public comment to two minutes. People were given notice of that yesterday, who requested public comment. I know that nearly all of you who have requested public comment I'm sure have written that down. So, what I'm encouraging you to do and would like you to do is to upload what you plan to give us as oral public comment, provide it to the commission as written public comment so that we have the ability to see all of your public comment and consider it. You need to do that within 48 hours of today's meeting. Please direct all public comment to matters that are before the commission and within our statutory duties under ORS 151.216. We will not hear public comment on any items that are not within our authority, specifically personnel issues that are not related to the executive director's performance and individual cases or individual defendants that are specifically exempted from our statutory authority and is not appropriate for public comment.

A little more information about how we're going to proceed with public comment. If you're appearing on virtual public comment, I'm going to set a timer, and I'm going to set a timer for two minutes. And it's going to be an audible timer. And when your time is up, you're going to be muted and will be sent out of the panelist mode back to being in the... I don't know what it's called but the viewing mode. And I'm sorry for that, but we have a number of items that we need to address. And that's just what's going to have to happen. So, please upload your public comments so that we do have the opportunity to review it. And I'll start with virtual public comment first. I also want to acknowledge that we received written public comment from Carl Macpherson, Olcott Thompson, and Stacey Lowe.

And I have for virtual public comment Kevin Neely, Heather Busby, Addie Smith, Joel Wirtz, Olcott Thompson, Shannon Wilson, Stacey Redding, Carl Macpherson. And we'll call people in that order. And if you're not there the first time, I'm going to move on to the next person. And in person, I have Clint Oborn and Colin Murphy. With that, we'll start with Mr. Neely. And Mr. Neely, before you start, I want to apologize to you about our last commission meeting. I was informed after public comment that you did not give public comment because the wrong link was provided to you. And I want to apologize to you, and I appreciate you being here this morning. And with that, please go ahead.

Kevin Neely: Thank you for that. Good morning, Madam Chair and members of the commission. My name is Kevin Neely, and I work with the Oregon Criminal Justice Truth Project. I'm here today to, again, comment on the state of indigent defense representation. When I last testified to the commission in December, there were over 3,600 on the unrepresented list. Today, there are over 3,900. At what point will the commission acknowledge that either the caseload limits are a failed approach, or more likely that implementation of those limits in six key

counties is a failed effort? Please read the article by John Gross. I've submitted my testimony, and there's a link to it. He's the director of Public Defender Project at the University of Wisconsin School of Law. His thorough analysis of the National Public Defense Workload Study is timely and accurate. Not only does he question the methodology, he notes that the findings must be viewed as aspirational, not implementable.

Allow me to paraphrase a telling statement. "I don't think the authors of the report are unaware of the consequences that will follow if public defenders are able to institute the recommended workloads. Without lawyers, cases can't go forward. The criminal legal system will grind to a halt. Legislators won't be able to scale up their indigent defense delivery systems. It would be prohibitively expensive, and there just aren't enough attorneys available, even they are willing to spend the money. So, if they can't increase the supply of attorneys, they will have to reduce the demand.

That means decriminalization and decarceration." This is a policy based decision. His point has been proven. The system is grinding to a halt. Once again, Oregon is a petri dish for criminal justice policy that in writing some may find compassionate and aspirational but in practice fails the very people it intends to serve. The decriminalization bill championed by OCDLA failed to get out of committee. With one exception, the proposals you are considering today do very little to end the crises in our communities and impacts to defendants, victims, and the courts. Yes, they merit your adoption. In particular, the provision allowing for rigorous enforcement of the contract – a tool we believe is already at the commission's disposal.

Jennifer Nash: Thank you, Mr. Neely. All right. Heather Busby.

Heather Busby: Hey.

[Crosstalk 00:06:59]

Heather Busby: Thank you, Chair Nash and commissioners. My name is Heather Busby. I'm the executive director of Youth Rights and Justice based in Multnomah County. I'm writing to express concerns with the vacancy policy and how it affects leaves up to 12 weeks protected under the Federal Family Medical Leave Act, the Oregon Leave Act, and Paid Leave Oregon. A leave is not a vacancy, but that's currently how the agency is defining it. The proposed policies do not differentiate between leave and vacancy, despite input from providers asking this to be addressed. Further, the policies would financially penalize providers when an attorney takes protected leave of 60 days or more. Per the contracts, funding amounts for attorney FTE include overhead and support staff. These amounts are not just for attorney salary. Therefore cutting funding based on an attorney

being out on protected leave for a period time would negatively impact operational capacity for many providers. Work continues while an attorney is out, including the work of investigators, paralegals, and others.

While an attorney is on leave, we do not stop taking appointments or serving that attorney's clients but provide coverage and shift responsibilities temporarily and to a different attorney. This is normal course of operations in a legal office. Further, during the time the attorney is on leave, we still pay their salary. We're still responsible for payroll taxes, insurance, and other benefits while they are out. Finally, the agency's interpretation of vacancy would likely put OPDC in violation of the Americans with Disabilities Act and Oregon's disability discrimination laws. We urge the commission to reconsider adopting policies that put providers in the position of not being able to financially support attorneys while they're on federally protected and state protected leave. Thank you.

Jennifer Nash: Thank you, Ms. Busby. All right, Addie Smith.

Addie Smith: Hello. My name is Addie Smith. Today I am speaking before the Oregon Public Defense Commission. Today is Wednesday, April 16th, 2025. Oregon's African American demographic is less than two percent, while a number of African American people in this state's injustice system exceeds nine percent. The prison and custody population of African Americans in Oregon has increased 347%. Every level of court in this state is racist. It is incumbent upon us to be diligent in ensuring that unrepresented persons in Oregon's courts are receiving attorneys who are timely, attorneys who show up to court, attorneys who aren't on vacation when appointed to cases, attorneys who are prepared to demand jury trials on behalf of their clients, unwilling to succumb to friendships with judges and prosecuting attorneys, attorneys while are willing to speak out against injustices and violations of the law by judges and prosecuting attorneys. Right now, this is not happening.

OPDC must not rush to simply provide a body that has a bar number to a defendant, which is also happening a lot. OPDC must also provide that Oregon's unrepresented persons have an attorney whose services are more than adequate. The contract and even hourly wage attorneys must understand that their services are affective, thorough, with preservations of rights, legally found unjust, no more adequate services... Shucks, sorry. OPDC must provide updated contracts that will not pay attorneys if they do not go to court or send an attorney to court on their behalf. OPDC must also provide in the updated contracts that attorneys who do not meet in person with their clients within 48 hours, clock in with their location at court, and clock out when they leave court, and provide court time and attendance at status hearings, trials, and anything else on behalf of their clients, providing a working phone number with the jail so

that their clients may contact them, investigate all defenses provided by the client, and provide audio transcripts from the hearing and all documents submitted to the court on their client's case to their client will not be paid. OPDC must reduce...

Jennifer Nash: Thank you, Ms. Smith. Joel Wirtz.

Joel Wirtz: Good morning, Chair Nash, Director Kampfe, members of the commission. My name is Joel Wirtz. I'm the executive director at Deschutes Defenders. That is the nonprofit in Bend, Oregon. I'm testifying in opposition to the contract modification proposal for partial weighting for subsequent attorney. That is to say the that that second attorney would only be given 50% case credit. I'll start with a quote from Charlie Munger. "Show me the incentives, and I'll show you the outcome." This is an incentive for attorneys to do half the effort. This is our experience here in Bend. The vast majority of cases that get transferred within our office between attorneys is because those are the most difficult cases with the most difficult clients. They take the most time. My attorneys who raise their hands to take these tough cases, they are the most dedicated attorneys. The agency and the commission need to acknowledge that these attorneys are the most important to our system, and we shouldn't belittle them by only giving them half credit. Last year, six attorneys in my office left.

The remaining attorneys were given these hard cases with the hardest clients. They did the extra meetings to reestablish attorney-client relationship. They went through all the discovery. They prepped for trial. The de facto rule should be 100% case credit, and we should create another rule for those few cases where in fact there is only 50% of the time. For example, for diversions or delinquencies which we keep open which they're in probation status. My ability to recruit eight attorneys in the last year was predicated on the commission's votes to move forward towards national standards and ORS 151.216 that outlines...

Jennifer Nash: Thank you, Mr. Wirtz. All right. Olcott Thompson.

Olcott Thompson: Good morning, Chair Nash and members of the commission. I'm Olcott Thompson, the executive director of the Marion County Association of Defenders, MCAD. Judge Lipscomb is one of my predecessors. MCAD is a member of the Oregon Defense Consortium Association. I'm speaking from the perspective of a consortia. I have struggled with what to say to you because so much is wrong with what is happening with the agency and its treatment of the private bar members of a consortia, among other issues. I've submitted written testimony both this month and last month about the agency's proposed policies, and I'll speak briefly about those policies. Someone described the proposed policies as punitive, and that is what they are.

Like many other actions of the agency are just a continuation of its actions to eliminate as many members of the private bar as possible. All those policies will do is increase the departure of private attorneys. They will do absolutely nothing to increase the time an attorney has to devote to representing appointed clients. Whether you give me 100%, 75%, or 50% credit for representing a client I receive because another attorney withdrew does not change the work I will do for that client. It only creates the fiction that I have more time available and further devalues the work I do. The same is true for a client I withdraw from representing. Threatening attorneys with reduction of pay because they are not meeting their artificial MAC and then having to spend time justifying why they are not at that illusionary level will only drive more people from the system. OPDC is supposedly contracting for time, but then measuring contract compliance against the number of cases. That only reinforces the reality that OPDC is continuing to enter into statutorily prohibitive, unethical, and unconscionable...

Jennifer Nash: Thank you, Mr. Thompson. Shannon Wilson.

Shannon Wilson: Thank you, members of the commission. I want to speak to contract compliance policy, specifically the prong of this policy requiring contract administrators to ensure attorneys working under the contract maintain case loads of at least 85%. As lawyers, we must rely on today's professional standards to shape our expectations of our practice. We cannot ignore them. And most importantly, no lawyer can ask or suggest that another lawyer commit negligence and ignore professional standards for care for our clients. But this agency's MAC standard, even 85% of that caseload standard, is long expired and much older than the majority of Oregon public defenders doing this work. The ABA and the National Center for State Courts found these outdated standards to, "Significantly underestimate the time required for public defenders to provide reasonably effectiveness of counsel to their clients pursuant to prevailing professional standards."

I'm asking the commission, from one lawyer to another, to not approve standards that grossly underestimate the time required to practice law. We must not encourage or accept negligence within our noble practice. And with that in mind, I want to end with a quote from Director Plummer in Lane County who states, "I would urge OPDC to stand with providers in acknowledging that increasing case loads cannot and should not be the solution to the crises that we face today." Public defenders show up each and every day to advocate for the rights of Oregon's citizens. But in this moment, we need our own advocate. I urge OPDC to be that advocate and to resist calls to resolve system wide crises on the backs of our public defenders. Thank you.

Jennifer Nash: Thank you, Ms. Wilson. Stacey Redding.

Stacey Redding: Chair Nash, members of the commission, my name is Stacey Redding. I have more than 17 years of experience as a public defender in Oregon. I'm the executive director of MDI in downtown Portland. I'm a member of the Public Defenders of Oregon. I acknowledge that the agency and commission are under immense political pressure to create additional attorney capacity without additional investments in public defense. I also acknowledge that the agency and commission do not have the authority to promote responsible or efficient practices from the prosecutors or courts in our crises counties. And while we know that Oregon must shift to a workload model for public defenders, we're still operating with arbitrary and excessive MAC case numbers in our provider contracts and underline our budget forecasting. This morning, as you discussed proposed contract changes, I would highlight items three and four of PDO written materials regarding the early withdrawal policy and the credit for subsequent attorneys policy.

PDO's proposal would tweak the agency's proposals by allowing defenders who invested hours of work in cases in these postures to document that work and receive fair and appropriate credit for that credit. Our PDO proposal is aligned with Commissioner Mandiberg's suggestion in last Thursday evening's work group meeting. Oregon needs more public defenders to ensure we provide adequate representation for all. We must retain our existing hard working and dedicated defenders and recruit new defenders. I urge and the agency and commission to stand by your workforce. Discounting and discrediting the work our lawyers are doing will drive more defenders away from this noble but demanding profession. Thank you.

Jennifer Nash: Thank you, Ms. Redding. Carl Macpherson.

Carl Macpherson: Good morning, Chair Nash, Executive Director Kampfe, members of the commission. I submitted public comment on behalf of Public Defenders of Oregon. Of course I agree with what's in that public comment. I would ask this commission to really read, consider, and consider the alternatives. Not just the context of the alternatives but the alternatives themselves with every single policy decision that you're going to be voting on presumably today. MAC is arbitrary, as has already been stated, and has been weaponized against us. Individuals in the system outside of public defenders view MAC as a minimum. They replace the M with minimum rather than maximum. They ignore the fact that MAC is completely out of line with the other metrics that we have, which is outlined in the letter. They ignore the fact that ethical requirements control.

They ignore the fact that not every attorney can handle the same number of cases. They ignore body cam jurisdictions, heavy trial jurisdictions, the fact that

in Multnomah County in particular we have the worst jail access in the state where almost every week if not every day there's some aspect of jail access that is shut down so we can't see or talk to our clients. They're significant contributors to the unrepresented crises. There is systemic problems as well. I do want to focus very quickly on the chart that talks about time and the partial representation credit. Currently under the contract if you withdraw from a murder case on day 45, you get full credit. That's a windfall to the provider they shouldn't receive. Full and partial credit should all be based on estimated number of hours worked on a case, period. The chart within the letter on page four explains the number of hours.

Please remember that the number of hours contemplated by the contract is only accurate for misdemeanors. Because the other types of cases, you have a full case load coming into the new contract year. So, that doesn't contemplate that, the chart. It does for misdemeanors, presuming it's a brand new attorney. 5.25 hours per misdemeanor is what the contract contemplates. We have body cam footage, meeting a client, reviewing discovery, going to court – almost always exceeds 5.25.

Jennifer Nash: Thank you, Mr. Macpherson. That, I believe, covers all of the people who have signed up for virtual public comments. Clint Oborn.

Clint Oborn: Chair Nash, members of the commission, my name is Clint Oborn. I'm currently [Inaudible 00:21:54] I'm currently the executive director of Southern Oregon Public Defender here in Jackson and Josephine Counties. I had an attorney who was recently leaving my house as of this week and will be joining OPDC. I asked him to put some words in, so these are his words verbatim. "Oregon public defender is the most unique and [Inaudible 00:22:14] challenge of any professional job I've participated in. We're required to navigate complicated relationships with our clients, their families, the state, the courts, and even victims in some cases. All while the tock is ticking. The criminal justice system wants to move things forward, but we are [Inaudible 00:22:27] so we can really gum up the works. This leads to a unique tension where doing our job most affectively leads to more time required [Inaudible 00:22:35] more pushback from all the parties mentioned above.

We are stewards [Inaudible 00:22:40] over time. In November of 2024, I received my major felony qualification from OPDC. Similar to when I started receiving [Inaudible 00:22:48] I had to [Inaudible 00:22:49] my approach to strategy and organization to work these new cases in what I feel is a constitutionally sound manner. The difference this time around is the amount of work up front needed [Inaudible 00:22:58] major felony cases. Due to a combination of things including a steady flow of cases and increasing number of [Inaudible 00:23:03] clients and the random nature of a large amount of my

cases heading for trial, I was stuck with some tough personal decision. I could either work my cases less and let chips fall where they may, or I could work more, consistently more than 40 hours, and spend less time with my partner and children. Ten out of ten times I choose the latter because I take my oath to the constitution seriously. Ultimately I decided to leave my current position because I did not want to consistently and indefinitely be faced with that choice. I accepted a position with the OPDC trial division where I'll be better compensated, have access to more resources to work my cases more effectively, and be subject to a more favorable caseload model over time. To be clear, I believe that is the best way to keep attorneys long-term, as well as tracking [Inaudible 00:23:44] I understand that the waters are politically turbulent right now, and it is likely [Inaudible 00:23:48] procure even more money for public defense [Inaudible 00:23:50] further. However, I'd caution against any measures [Inaudible 00:23:56]"

Jennifer Nash: I have to stop you because I have to be consistent with the time. Thank you very much. Colin Murphy.

Colin Murphy: Chair Nash, members of the commission, good morning. I'm a public defender here in Medford working at Southern Oregon Public Defender. I've been a public defender for ten years this coming July. Today, I'm concerned some of these policies we are discussing may actually exacerbate the problems we face instead of resolve them. The US Supreme Court once stated, "There can be no equal justice when the kind of trial a man gets depends on the amount of money he has." Yet society has long measured public defense not by the quality of representation but by the number of cases that can be disposed of for the least amount of money possible and as quickly as possible. This is why our clients often refer to us as public pretenders or dump trucks. What they often see as efficient our clients rightfully call cheap.

The policy proposal for partial weight when a second attorney comes on board causes me concern because other people's files are almost always organized differently than mine. I usually have to start all over again from the beginning. Thus, taking over a file from another attorney is often much more difficult than getting a new file. Finally, the contract compliance policy causes me concern because it reduces ethical obligations to not do more work than you are able to, to a numbers game. A policy of "make your numbers, or your funding gets cut" encourage unethical poor representation and is a step backwards. Precisely what many district attorneys want and are currently pushing for. We've been accused of a work stoppage, yet we already take more cases than the ADA and the state of Washington recommend. Case caps are not a work stoppage. Instead, they are about respecting ethics rules, which prosecutors are supposed to champion. Our clients are people, not numbers. I thus ask that you please

keep the focus on quality representation and resist any efforts to [Inaudible 00:26:08] public defense to great representation. Thank you.

Jennifer Nash: Thank you. Very, very much. All right. That concludes the public comments portion of our agenda. Apparently I'm still timing, so I'm going to stop that, and we're going to... All right. [Pause] I think with people's...with the commission and the executive director's consent, I'd like to reorder the agenda a little bit. The public comment has been largely about the contract policy changes approval, and I think it makes sense for us to [Inaudible 00:26:58] first. While we have a lot of commissioners present. Mr. Reinhard is nodding his head. And while we have a lot of providers present. I want to be mindful and respectful of all the attorneys who have taken time out of their day to be here today, both virtually and in person. I know everyone is busy, and I think it makes sense for us to take that up first. So, with that, let's turn to discussion and action item about contract policy changes. Director Kampfe.

Jessica Kampfe: Thank you, Chair Nash, members of the commission. Just give me one more second to get the slides up. Perfect. So, we're going to talk about the proposed contract policy changes. And next slide please. We are under some time constraints to make decisions about those policies today because they would impact our '25-'27 contracts, and so with that impending deadline for that contract cycle the agency really does need decisions to be made by the commission today. And so this is the last date on our timeline. As you all can see, there are eight proposed policy changes. Partial weighting for early withdrawal, warrant removal policy, a cocounsel policy, a second or subsequent attorney policy, contract compliance policy, reduced caseloads for first-year attorneys, and the vacancy policy. The agency has taken the suggestion from commissioners to create data on these policies to show what the impact would be on MAC across the state. Mara, could you pull up the second slide please? Thank you. Oh, that is hard for me to see. I think I might have to pull it up on my email. My eyes are not good enough for that.

Jennifer Nash: Can you make that bigger? Because I can't even see it. Thank you.

Jessica Kampfe: And I wanted to demonstrate with very few slides for the commission today because I feel like the better use of the commissioners' time is for you all to discuss these policies rather than for me to walk through a lengthy discussion of each policy with you.

Jennifer Nash: And so with that, I'm sorry, just procedure wise, I think it might make sense to talk about these one at a time. So, introduce, discuss, introduce, discuss. And I know that the partial weighting really we should discuss those together, but I think it's easier if we do them one at a time.

- Jessica Kampfe: Okay. So, let's start with the reduced caseloads for first-year attorneys. The first policy on this is the one that ends 008. That policy applies only to the PCRCP program, and therefore it doesn't have any MAC impact. That's because the PCRCP program is not under the MAC model. So, it wouldn't impact that because it doesn't use that metric. It would reduce open caseloads for first-year public defenders in that program from 80 open cases down to 55 open cases for the time period that they're in that program. It is very closely related to the reduce caseload program for five-year attorneys under the criminal and juvenile models. That is the policy that ends in 009. This would decrease the overall MAC for a first-year lawyer by 33% from 300 annual misdemeanors down to 200 annual misdemeanors. This policy as a standalone policy would cost the agency ten MAC statewide, and so it would be a reduction in our capacity in the misdemeanor level. But it does acknowledge behavior that we're already seeing happening in the ground. So, many misdemeanor lawyers, first-year lawyers are already not meeting that 300 misdemeanor threshold. So, we do think that we would have more accurate reporting in terms of MAC utilization if the commission were to adopt this policy. And...
- Jennifer Nash: [Inaudible 00:31:35]
- Jessica Kampfe: Oh. I would note that we have received feedback and you have in your public comments that this is a step in the right direction but does not get the agency all the way to national or Oregon best practices.
- Jennifer Nash: All right. Chair Mandiberg?
- Susan Mandiberg: Yeah, given the public comments about MAC and the pretty universal opposition to using MAC, I just want to be absolutely sure... And I think I know the answer, but I want to get it on the record that now that we're in the executive branch and dealing with the governor's budget, we do not have the freedom to depart from MAC. That's the way the budget is written. And that's what we are going to use for the next biennium because of that. Is that correct?
- Jessica Kampfe: It's correct that MAC is the way that our budget is written. So, we switched to the Office of Economic Analysis doing caseload forecasting for public defense in Oregon as part of Senate Bill 337. We've done three rounds of that caseload forecasting. The agency is required to price the forecast, and we priced the forecast based on the units in which we buy public defense services under our current service level budget. And so when we buy public defense services under our current service level budget, we are buying those services under a MAC model. Therefore, our current service level budget is built under a MAC model that's the same as the governor's budget current service level, so that is the model that is being built out. In order to move from a MAC model to a workload model, we would have to develop a policy option package that would have to be

moved forward by the governor's office and eventually adopted by the legislature to change models.

Susan Mandiberg: And so we're dealing with MAC even though last year the commission expressed a preference for a workload model. We are not able to do that under the current budget?

Jessica Kampfe: The commission directed the agency to move to a workload model, and the agency took the commission's direction and built a policy option package based on that workload model. That was part of the agency's requested budget but was not part of the governor's requested budget and is not moving forward at the legislature at this time.

Susan Mandiberg: Thank you. So, that was my understanding. But I thought it was important to get it on the record that the commission is not all powerful and not always able to implement the policies we would prefer to implement.

Female: Commissioner Lininger has his hand raised.

Jennifer Nash: Oh, thank you. Commissioner Lininger?

Tom Lininger: Hi. Thank you. First, I wanted to apologize that I can't be at the meeting in person. I'm from southern Oregon. I wish I could be down there. I teach at the University of Oregon School of Law and am not able to break away, so I'm here on Zoom. I wanted to speak right away in strong support of the reduced caseload program for first-year attorneys and wanted to share my perspective as one who's encouraging law school graduates to consider this career path. People are very daunted by the prospect of immediately being overwhelmed by excessive caseloads. And I think if we were to abandon this provision... And I know we're under a lot of pressure to increase caseloads across the board. I think that would be a short sighted move. Because in the long run, it would restrict the pipeline of new attorneys we need from law schools. And by the way, thank you very much, Commissioner Mandiberg, for that clarification. I agree. It's frustrating that we don't have the freedom to enact an optimal policy.

Jennifer Nash: Thank you. From our work group sessions, from our prior commission meetings, and just generally today, I believe that there is a consensus that we should move forward on this, but I want to offer the opportunity for other commissioners who may want to ask questions or don't feel that this is a policy we should adopt to talk about that. So, please if there's anyone who has questions or is not in favor of this, speak up. Otherwise, I'll move to call for a vote.

Alton Harvey Jr.: It's not that I have a question. I do have a comment. It just seems like the agency and the commission are the fall guys. It doesn't matter about... We're really trying to fix this thing, and it doesn't matter once it reaches that level. And I'm so frustrated with the fact that the agency is the fall guy. The commission is the fall guy. I agree with you, Commissioner Mandiberg, we don't have all power. It's so frustrating. We all know what the issue is. They know what the issue is. And no one... I'm [Inaudible 00:37:22] I'm so frustrated. Welcome to my world, because that's why I'm on the commission. That's how it feels.

Female: Commissioner Reinhard has his hand raised.

Jennifer Nash: Commissioner Reinhard.

Brook Reinhard: Thank you. I agree with my fellow commissioners' comments. I just have a question and a comment. Actually I guess they're both questions. The first question is on PCR. I agree that that should be commensurately reduced. But it seems like the crises is in criminal defense, not PCR quite as badly. I'm just talking about which house we try to put the fire out on first. So, if it's a question of resources between the two, it seems like the priority needs to be on first-year reduction for misdemeanor attorneys so that we can keep the pipeline going. I completely agree with my colleague, Professor Lininger, on this one. So, I guess my question is do we have the money to do both? Because if not, it seems like the triaging the misdemeanors is really even more important. Although I really do support PCR. The second question is I didn't really feel I got a full answer to Commissioner Mandiberg's question on whether we could go to an open caseload model.

We understand we don't have the money to go to a full caseload model. As long as I've been watching commission meetings, this is more than ten years now, the commission has never had the money to do what we want to do. So, given that we don't have the money, what percentage could we fund...Director Kampfe, if you know the answer to this question... What percentage of an open caseload model could we fund with our money right now if we moved to an open caseload model for the upcoming biennium? I realize it wouldn't be complete because our POP was not approved. But what percentage could we fund if we went there?

Jennifer Nash: Why don't I try to answer the first part of your question, which isn't the number part. So, the issue is there is a DAS case forecast. The legislature is presumably going to fund us fully to cover...well, that's a big presumption. We will be funded at some level to cover some portion, maybe 100%, maybe not 100%, of the forecasted caseload. That money is going to be based on the current service level budget, which is a MAC model. If we did not follow the legislative directive

to continue with the MAC model and use the money in a manner that was not legislatively prescribed, I think it would make things very difficult for the executive director and the commission, especially given that the legislature is simultaneously trying to strip the commission and the executive director of independence. So, I hear you. I don't necessarily disagree that that would be preferable.

But it is very careless, and I would be very reticent to... Well, I don't think that we can... I mean we're lawyers. We can't disobey a law. Right? So, there are legal issues with that as well. But I understand the sentiment, believe me. And I don't think there's a single commissioner that disagrees with anything that Commissioner Harvey said. So, that's the longer answer without getting to the number piece. All right. With that, if there's no further discussion, I need a motion to... Well, let's do this in two parts. First, is there a motion to reduce the PCRP requirements for first-year attorneys from 80 to 55?

Susan Mandiberg: So moved.

Jennifer Nash: And is there a second?

Alton Harvey Jr.: Second.

Jennifer Nash: All right. We need a roll call vote.

Female: Commissioner Nash?

Jennifer Nash: Can you come back to me?

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Female: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Jennifer Nash: I'll vote yes. All right. Then is there a motion to reduce the criminal caseload from 300 weighted to 200 weighted misdemeanors for first-year attorneys?

Susan Mandiberg: So moved.

Jennifer Nash: And a second?

Alton Harvey Jr.: Second.

Jennifer Nash: And a vote please?

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Female: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: All right. And then moving next to the cocounsel policy.

Jessica Kampfe: Thank you. So, this policy would create a lot more clarity for co-counsel within our contract structure. Currently we don't have ceded cocounsel rules, and so this would state the rules for cocounsel, which we think will be really helpful. It is difficult to tell what the exact impact is because currently on our caseload reports we have an optional column for cocounsel, so we don't have think that it's currently being tracked in a consistent way. Although, our expectation is that this would increase MAC because when we look at the case types on which cocounsel is being assigned within our current caseload reports, we're seeing it used really heavily on misdemeanor cases and cases where it looks like somebody might be leveling up, like second chairing a minor felony case in order to move from misdemeanors to minor felonies. And that was probably more appropriately considered a supervision role than a true cocounsel role. So, the new policy says when cocounsel would be expected.

So, the cases for which cocounsel would be mandatory would be aggravated murder and murder in the first degree, and juvenile waived cases, so cases where kids are being waived into adult court for prosecution. The cases for which cocounsel would be presumptive, meaning that we assume that you need cocounsel, you don't need preapproval, but we're not requiring it, would be other life sentence cases. So, murder in the second degree, Jessica's Law, and felony sex cases that carry a life sentence. All other cocounsel cases would need to be preapproved by the agency, and we set forth criteria by which that approval would be appropriate based on the severity of the charges, complicated or novel issues of law or fact, the need to mentorship lawyers, not having local counsel that is sufficiently qualified to represent, and others. So, we should be able to track the ways in which cocounsel is used on those lesser cases to a greater degree under this policy.

Jennifer Nash: Thank you. I have a question about the policy. I noticed in I believe it was Mr. Macpherson's written public comment he brought up a concern about the requirement to ask the court for the appointment of cocounsel and suggested instead that it should be by OPDC policy whether cocounsel is appointed. And I thought that that was a good point because you could run the risk of either having a judge appoint when policy didn't allow for an appointment or conversely not appoint when policy did allow. So, I'm wondering if the agency is considered that or would like to talk about the effect of that, or just generally whether that should be...that portion should be changed.

- Jessica Kampfe: I saw Mr. Macpherson's comments and agreed that public defense should be the folks that are in charge of the appointment process. Under our current structure, the court appoints counsel, so the court has to fill that court order that appoints somebody on a case. And so that is not going to change. OJD is still going to control the judge signing on a court order that says, "This lawyer is appointed," and similarly, "This lawyer is removed." So, we can approve it, and we can approve it for the caseload reporting. But if it's not alignment with the Oregon Judicial Department's process, business process, then we will see a further fracture in the OJD data from OPDC data where we may be calling cases...saying a lawyer is appointed on a case that OJD doesn't. So, I think there's room for us to perhaps partner with OJD there and work on some process pieces. So, certainly whether or not cocounsel is approved on a case has to be an OPDC function, but the agency doesn't have the ability to fill out that court order.
- Jennifer Nash: So, similar to kind of a PAE issue. So, it's a payment issue rather than a court order issue. I'm kind of sorting this into buckets. So, if you get appointed on a...if you get cocounsel appointed on a case where the agency says, "This isn't an appropriate cocounsel case," then it might be that that cocounsel isn't paid or isn't given weight. By that I mean given credit for it. Is that what you're saying?
- Jessica Kampfe: So, yeah. We have multiple programs that address public defense. So, if we did not approve somebody for cocounsel, it would not be appropriate for that person to list that case on their caseload report if they're under contract. So, we would not expect that case to be listed on the co-counsel's caseload report unless they've been approved by the agency or in one of those presumptive categories. For hourly attorneys, we would not authorize an hourly attorney and would not pay bills for an hourly attorney.
- Jennifer Nash: Thank you for clarifying that. I just want to make sure that people understand that very clearly if you circumvent the rules. So, I think that probably needs to be written in somewhere. If you circumvent the rules and it is a category that's approved then the agency could still deny compensation, however the compensation would be for that category. Okay. Any other questions or any comments?
- Peter Buckley: Yes, Madam Chair. I'm just wondering if the process for determining approval, is that going to be...do you already have a policy drafted for that, or is that going to be developed in partnership with other...?
- Jessica Kampfe: The process will need to be developed. We do not have very much process at all around cocounsel right now because it has been area that has very little agency

policy on it historically. So, there is work for us to do to develop process. And we are happy to do that in a collaborative way.

Peter Buckley: Thank you.

Jennifer Nash: Any questions, or concerns, or thoughts from commissioners on video? Any concerns about the policy moving forward? All right. With that, I will ask for a motion adopting the [Inaudible 00:49:56] policy so the plan to have a policy. [Laughs] The cocounsel policy as labeled by the agency today.

Alton Harvey Jr.: So moved.

Jennifer Nash: And a second?

Peter Buckley: Second.

Jennifer Nash: All right. Can we have a vote?

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Female: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: Thank you. All right. Moving next to let's take out the partial weighting for early withdrawal and partial weighting for subsequent attorney policies together.

Jessica Kampfe: On the partial weighting for early withdrawal, this is an area where the agency anticipates that we would see increased MAC capacity would we implement this policy. It would assign partial case weight to cases if the lawyer withdraws before the case is closed. And it provides direction for a lawyer about when to close cases, what it means to close a case. The partial weighting is based on the crime seriousness given the average time to disposition of certain crime types. And so it would provide no weight if the case if the lawyer withdraws from the case within the first five days. That actually is an expansion from the policy as it was written before it came before the commission last time, which was only 24 hours. Our current contracts have that five-day rule. It's not something we've received a lot of negative feedback on.

And the reason to expand it out to the five days is that often times people are still identifying current client or former client conflicts during that first five-day period as they're getting discovery in on their cases. The drawback of implementing the five-day rule is we do expect lawyers to meet with their clients within the first five days. And so if they meet with their client and then identify a conflict they would not be given any case weight even though we do know that lawyers are working on their cases within the first five days. Commissioner Harvey?

Alton Harvey Jr.: Is that the only reason that an attorney would withdraw? Conflict of interest?

Susan Mandiberg: In the first five days.

Alton Harvey Jr.: In the first five days. Well, yeah, in the first five days.

Jessica Kampfe: There could be other reasons why a lawyer would... I mean, yes, it would be a conflict of interest. But the conflict of interest could arise from different sources. So, one source could be they represented the codefendant or something like that, which is a very straightforward type of conflict of interest. Another conflict of interest could be the client and the lawyer immediately identified that they are not going to be able to work well together, and they withdraw for that type of a conflict. And then the other type of conflict that we might see within the first five days is that the lawyer says, "I have an excessive caseload. I ethically can't provide representation for this client at this time." And so they quickly move to withdraw from the case, and the court grants it. So, I

would expect that those would be the three types of conflicts we might see in the first five days.

Alton Harvey Jr.: Thank you.

Susan Mandiberg: I have two questions. Under the early withdrawal policy updates since the March 26th draft, you said flexibility... The attorneys who feel the work they've performed is greater than the work accounted for in the policy, flexibility is achieved through OPDC's extraordinary case circumstances weighting process. So, assume an attorney believes that she's not getting enough credit for work done and wants to use the extraordinary case circumstances process. Specifically what steps does that attorney have to go through under that extraordinary case circumstances weighting process?

Jessica Kampfe: Thank you, Commissioner. That is a policy that we've had a for long time. That extraordinary case weight policy. And they submit a document telling us all the work that they've done on the case and why they should get more credit on that case. That's then reviewed by the trial support and development team, and a decision is made about whether or not to grant more weight. Right now we don't get that many of them. So, I would expect that this policy will result in an increased use of that process. And it's an area where the agency will need to do process work to make sure that we are able to quickly review and administer those extraordinary case credit requests.

Susan Mandiberg: Are there criteria currently in place to help the staff decide when to give that credit and when to reject the request?

Jessica Kampfe: I will have to look at that policy to give you that information, but my gut is that it's pretty loose.

Susan Mandiberg: So, I assume that whatever process we develop will include criteria. Will those criteria be published so that the people who apply have some sense of what they're up against?

Jessica Kampfe: That sounds like a great idea.

Susan Mandiberg: And when can the commission expect or can the commission expect to see a report on what process you're putting in place? And if so, when might we be able to get a glimpse of that?

Jessica Kampfe: Okay. I've just gotten a note that they will send me over the extraordinary case credit policy, so I think I think I can share what we currently have with the commission. We can certainly bring that to the commission either for review at least and to talk about ways in which we can publicize that information.

Susan Mandiberg: Given the hostility towards all this and my personal need to support...and I think I've probably shared...the lawyers doing this work, I would very much like the commission to be able to see the details of what process is being put in. My second question is why isn't that same flexibility being provided in the policy for credit for subsequent attorneys? Because we heard in the public comment that often the subsequent attorney in order to do a decent job really has to almost start from the beginning in reviewing the case file that exists, even if it's within the same term. And I certainly can understand why that would be true. Different lawyers approach cases differently. One good reason to have somebody else look at the file is that second person might notice things the first person didn't notice. The first person might not have had a good relationship with the client, where the second lawyer was going to try to remedy that problem. It seems to me that the same flexibility needs to exist in the subsequent attorneys policy. Again, it's not automatic, but a lawyer should be able to explain why more credit is required.

Jessica Kampfe: Thank you, Commissioner. And on page two of the subsequent attorney policy, it does say attorneys may request additional case weight through a process designed by OPDC.

Susan Mandiberg: I'm sorry, I missed that.

Jessica Kampfe: But it does not specify that that process is the extraordinary case credit process.

Susan Mandiberg: That's what I thought.

[Crosstalk 00:58:25]

Jessica Kampfe: So, I agree with you that it would make sense for those policies to reference the same process.

Susan Mandiberg: Great.

Jennifer Nash: Yeah. I mean in my experience sometimes taking over a case from another lawyer is even more work than if you'd had the case yourself the whole time. So, I think the subsequent attorney policy is even more...is problematic without that ability to come in and say, "Hey, I want full case weight on this because I basically represented this person from day one."

Susan Mandiberg: Absolutely.

Jennifer Nash: You have to review all the discovery. You have to do your own investigation often times. Sometimes not. Sometimes you get the case, and it very quickly

resolves with the change of lawyer, and you don't do very much work. But most of the time, you're doing as much if not more than you were if you were on the case from the beginning. So, I agree that that should be consistent.

Alton Harvey Jr.: Doesn't the type of case dictate what you just described?

Jennifer Nash: Sure.

Alton Harvey Jr.: Okay.

Jennifer Nash: So, that's why the default would be you get partial credit, but you have the ability to come back and ask for more than that with a specific process. And just a note – my expectation...I guess probably our expectation is if we're implementing these in the next contract period then those policies, even though it's a short timeline, would need to be developed before the next contract period begins. So, I'm guessing [Inaudible 00:59:54] then. And for the partial weighting policies, as we started talking about the second or subsequent attorney piece of it, I wanted to be clear that the second or subsequent attorney reduction of weight to 50% applies when a second or subsequent attorney is in the same law firm as the attorney that withdrew. So, if a law firm is appointed to represent a client, the first lawyer withdraws for whatever reason... Perhaps they left that law firm for [Inaudible 01:00:30] issues, and the case gets reassigned within the law firm, that's when the 50% reduction would occur for the second lawyer.

So, the law firm would not receive more than 150% case weight for that case. The policy is also written to say that when reassigning a case to a second or subsequent attorney, first it needs to be reassigned within the same law firm. Second, it needs to be reassigned within the same entity. So, if it's say a consortia, you have both the public defender's office and a consortia in the community, one consortia member withdraws from the case and gets reassigned within that consortia first. Then within the same judicial district. So, it would go from the consortia potentially to the public defender's office. And then [Inaudible 01:01:20] judicial district.

And that's in part because under the MAC policy we provide additional case weighting for people who are taking cases from outside of that jurisdiction. There is data work for the agency to do here. We know within the public defender offices, the nonprofit public defender offices, which lawyers all work together in that same law firm. But within the consortia model, we know which lawyers work in the same consortia, but we don't know which lawyers are in the same law firm within the consortia. So, we do need to do some data work on that caseload report in order to implement it.

Jennifer Nash: It looks like Commissioner Harris has his hand up. Commissioner Harris. You're muted.

Rob Harris: Yeah. Thank you. I just wanted to speak in favor of both of these policies. They've been developed over a period of time through work groups and through the agency personnel. There's been some real legitimate questions and issues raised about these, and I think that many of those can be addressed in the agency guidelines process. Particularly as Commissioner Mandiberg pointed out, there is process for extraordinary credit in some of these cases. So, I think we need to keep in mind that these are base numbers, base rules that we're going to have in the contract. But, again, there are ways to get extra credit in some cases. On the partial weighting for early case withdrawals, I point out that that actually is sort of a move towards an open caseload workload model. And we are stuck with the MAC. But one of the reasons this policy was adopted is because it does sort of track your open caseloads a little bit closer than a pure MAC system would.

And so I think that that is a move in that way, in the right direction. It recognizes a reduction in caseload and appropriately adjusts the MAC. We're stuck with the MAC, trying to make it fit in the world we'd like to have. But, again, this is what we have. On the partial weighting for second or subsequent attorneys, as you pointed out, it only applies when that happens within a law firm. And if you look at why that happens within a law firm, there's various reasons why a case might get transferred. It could just be because someone left. And you need to think about this partial weighting as some of the work has been done in the law firm with an investigator, with the staff. There's been a relationship built with your staff, as well as with the lawyer. There is some less work to do. The other thing is not all of the cases transfer to the hardest ones. Sometimes a lawyer leaves, and they've got 50 open cases, and not all of them are hard. Some of them are ready to just do a wired plea agreement the next week.

So, yes. Yes, absolutely. There are cases where it gets transferred because these are the hardest of the hardest cases. But when deciding what that reduction should be or the partial credit should be, that's based upon the median case, not the worst case scenario. Because, again, we're stuck with the MAC system. So, we have to give credits. We have to make some assumptions. But those assumptions can be overcome by the extraordinary credit process as well. So, now if me... Maybe it's not 50. Maybe it should be 60% or 62%. I don't know. But, again, I think we have to make some assumptions within this contract, again, with the escape hatch. So, I think that is a good policy for now. Maybe it can be changed later on after our experience. Finally, my last comment on this is that I think the agency could adopt a policy... Mr. Macpherson talked about this. Other people have talked about this. About these cases that are extra and maybe what the agency is going to do with the guidelines. I would encourage

the agency to consider including in their policy on extraordinary credit that if a lawyer is...

Number one, if you're going to get extra credit, normally you identify those cases pretty darn early in the process. So, if that's the case, give extra weight to an attorney who keeps contemporaneous hourly records of the work done on the case. They can choose not to do that. But if they do choose to do that, again, we would be encouraging people now to go to time keeping, tracking, data collection. And that's a good policy to have. If they do do that under the policy, give them... Obviously take that into consideration when granting the extra weight. But, again, that doesn't have to be done in the contract. That could be done within the agency as part of their policy. So, those are my comments. Thank you.

Jennifer Nash: Any other...? Thank you very much, Commissioner Harris. I like the suggestion in the policy, too, that it would be persuasive to keep time to prove that it's an extraordinary case. I think that would be helpful. All right, Commissioner Reinhard.

Brook Reinhard: I just want to echo Commissioner Harris's comments, and I think they make a lot of sense. I'm a little worried that given the amount of feedback OPDC received about this particular policy before, while I think the agency is really on the right track with these amendments, I guess from looking at the agenda and looking at the discussion, I don't entirely understand how many revisions have been made in the finalized policy. So, not that I get a vote, so you all can do whatever you want, but I guess I'd be a little leery of voting on this today if there's a way to postpone this particular agenda item just to make sure it's really clear what the final policy is that OPDC would be adopting now. And maybe I'm dismissing that. But I see in the agenda items it's update since the March 26th draft. And I see all that, but I wish it were spelled out all together so the commission is really clear on what it is that we're actually voting on today. Because I think there were a lot of productive things that came out of the work session this last week. Thanks.

Jennifer Nash: That's a very good point, and perhaps before we take a vote I will... Let's have the specific bullet points of the policy that we're changing to be clearly laid out so we are voting...so we know exactly what we're voting on. I think that's a good suggestion. Any other comments, or concerns, or questions before we move to...? I do think we need to take a vote on these. But any other questions, concerns? All right. So, with that, let's lay out specifically the partial weighting for early withdrawal, and then the partial... And we can vote on these separately. The partial weighting for early withdrawal policy that the agency is asking the commission to vote on. Director Kampfe, sorry.

Jessica Kampfe: Oh, thank you. You want me to give the board...? So, the policy is the policy that appears in your packet. And the...

Jennifer Nash: It's a paragraph summary. Do you have a bullet point sort of...? I mean in the materials, it's...

Jessica Kampfe: Page 53 of the materials has the policy itself set out in it, and it's policy number 4042000...

[Crosstalk 01:09:00]

Jennifer Nash: Yeah, I'm sorry. Yeah. I apologize. I was looking at the summary, not the actual policy. So, very helpful.

Jessica Kampfe: So, I have asked our staff who worked on updating this policy to give me a bullet point of the changes, and I received the following message. They changed the timeframe during which an attorney receives no weight for the case from 24 hours to 5 days to account for conflict checks and conflicts that arise within the first five days. There was no change on the flexibility to receive additional weight on cases because the original policy also referenced the extraordinary case credit. So, we didn't make any changes there. And we deleted reference to the attorney warrant removal policy, and that is because based on the agency's recommendation with regard to that policy that the commission not adopt it, we removed it from this policy. So, on the warrant removal policy, the total MAC that we would recuperate is relatively low, 1.3 across the contract cycle. We heard feedback from a number of providers that it would impact the services they were able to provide to their clients on warrant cases. And so taking that into account, the agency's recommendation is that the commission not adopt that policy. And therefore, we removed reference to it in the partial weighting policy.

Jennifer Nash: Actually, there's a paragraph that talks about an attorney closes the case because a client has a warrant for 180 days.

Jessica Kampfe: 180 days.

[Crosstalk 01:10:49]

Jennifer Nash: You're just saying it wasn't changed.

Jessica Kampfe: We didn't change it 90.

Jennifer Nash: Okay, so you didn't remove... You just removed the 90, okay.

Jessica Kampfe: Yes, correct. It wasn't changed.

Jennifer Nash: All right. I appreciate that. So, with that, in our materials I do see the actual written policy. I apologize. And it is policy 404.200.04.000206. 206. [Laughs] We know what I'm saying. And is there a motion to adopt that policy for partial weighting for early withdrawal for cases which just, again, for the record, does include a provision to allow for a person to request additional credit based on extraordinary circumstances?

Peter Buckley: That's in this policy?

Jennifer Nash: It is. It is.

Jessica Kampfe: It is.

Jennifer Nash: It's on page 54. The second to last paragraph. It says, "OPDC is committed to attorneys being compensated for their work on cases and attorneys who feel that the amount of work they perform on a case is not reflected in this policy may request extraordinary case weighting as prescribed by OPDC policy. Is there a motion to adopt this policy?

Peter Buckley: I'll make the motion.

Jennifer Nash: And is there a second?

Rob Harris: Commissioner Harris seconds.

Jennifer Nash: Thank you. And a vote?

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: [Inaudible 01:12:14] Yes.

Female: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: Okay. Then moving on to partial weighting for second and subsequent attorneys, which is policy 404.200.04.007. And that policy is laid out in our materials. And...

Jessica Kampfe: And I will note that the last paragraph of this policy says OPDC is committed to attorneys providing highly skilled [Inaudible 01:12:59] Attorneys may request additional case weight through the process designated by OPDC and that our recommendation would be that any motion include a request for the agency to change that to the extraordinary case credit.

Jennifer Nash: Is there a motion to adopt this policy with the change to make it consistent with the early withdrawal language regarding attorneys being permitted to request extraordinary...request additional case weight based on the extraordinary circumstances?

Rob Harris: Commissioner Harris so moves.

Susan Mandiberg: Second.

Jennifer Nash: All right. And a vote.

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Female: Commissioner Lipscomb?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: Thank you. All right, moving on next to the attorney warrant removal policy.

Jessica Kampfe: The agency has long had a legacy policy of allowing lawyers to stay on a case for 180 days after a warrant was issued. This is something that we had a lot of conversation about in the past year or so with the Oregon Judicial Department. As much as the Oregon Judicial Department's data shows that the majority of warrants cases that don't return within the first 90 days are not going to return within the next 180 days. Therefore, the agency had created a policy reducing that time period from 180 days to 90 days. When we looked at the data on this policy, it does not recupe us a whole lot of MAC, which makes sense because not a whole lot of people return that last section. So, it tracks that it does not actually buy us a whole lot of MAC back.

At the same time, we heard from providers that this would be pretty disruptive for their ability to advocate for their clients once they go on to warrant status. And sometimes people are on warrant status because they were actually incarcerated in a different jurisdiction. So, they've got a bench warrant, say, in Jackson County, but they are sitting in jail in [Inaudible 01:15:28] County. And so lawyers [Inaudible 01:15:34] it would reduce their advocacy for clients to remove the ability to stay on the case for 180 days. Considering both of those things, the agency is not requesting the commission move this policy forward.

Jennifer Nash: All right. Are there any concerns or questions about not moving the policy forward [Inaudible 01:15:56] All right. Well, I appreciate the agency really looking at the data and making data informed recommendations, and we very much appreciate the request not to move this forward based on that data considerations. So, let's move next to vacancy funding.

Jessica Kampfe: The vacancy funding policy change is a really significant policy change for the agency. So, under our current vacancy funding policy, once an entity tells us that they have a vacancy, the agency pays for 100% of that position for 60 days. And then for certain entities, we are also paying a \$72,000 a year prorated monthly for an additional 60 days. So, that means that the entity receives funding for a vacancy in full or in part for 120 days. They also retain the ability to fill that position. So, they have position hiring authority for the full 120 days. The proposed policy makes some pretty significant changes. The first is that the vacancy funding would immediately be reduced by 50%. So, instead of for the first 60 days receiving 100% of the funding, it would be 50% of the funding. The second piece is that it would only extend the position authority for an additional 60 days. Or sorry, an additional 30 days.

So, the position would stay with that entity for a total of 90 days. The last third of which would be unfunded. The agency paid for almost 22 prorated MAC of vacancy in our criminal contracts through the last contract cycle. So, this was a significant expense for the agency, where we could have used this money to purchase more lawyers to do work during this time period. The other challenge that the agency faces with the existing policy is we don't have flexibility to give people position authority to hire when they can hire if the positions are tied up in vacancies within other entities. So, for example, if the public defender's office in Jackson County has somebody that they've recruited and then want to hire them, and there's a vacancy in Marion County, we can't say shift it, because that vacancy sits with the Marion County office for 120 days, and so it can't be moved. And so this would shorten that by 30 days and give the agency more ability to move those vacancies where the greatest need is.

I will say that our [Inaudible 01:19:02] development team does look at where the vacancy...how many vacancies we have in the system or how much MAC we have in the system to be able to allocate. And when we get [Inaudible 01:19:13] entities, we look at the need in that jurisdiction. So, we continue to prioritize increasing public defenders in the areas where we have unrepresented persons and very, very high MAC utilization. So, those are the places where we're most quick to say, "Yes, go hire. We'll add to that contract." And then in areas where we have lower MAC utilization, we're not giving folks authority to hire. So, even once a position is removed from a contract, the position authority is removed, if that contract is in an area where there is a high need, that area will still be prioritized when they are able to recruit for a position.

We have heard a lot of feedback about the intersection of this policy and paid leave. It's a really tricky area for the agency. One of the decisions that has been made with public defense many, many, many, many decades ago was to use a contractor based system in Oregon where public defenders are independent contractors for the most part. Now, that's not true system wide. We do have state employees at this point in time. But, still, the majority of public defense work is being done through an independent contractor system. The obligations of the state are different to their employees than they are to independent contractors when it comes to things like paid leave. The statute treats independent contractors differently than it treats employees. And so I think many providers are rightfully noting that the state doesn't pay for their staff's paid leave, and that creates a significant cost for them because many of our providers are themselves employers.

So, the profligation with paid family leave applies to the provider with regard to their employees but doesn't necessarily apply to the state with regard to the independent contractor. And that is a tricky area for us to navigate. We do want people to be able to have position authority to have people come back and do those contracts when they're done with their paid leave. But we don't have a statutory obligation to fund paid leave for independent contractors.

Jennifer Nash: Okay. Thank you. Are there questions, comments from commissioners about the vacancy [Inaudible 01:21:55] Commissioner Harris? You're muted, Rob.

Rob Harris: Sorry. Thanks for that, Director Kampfe. I had a couple of questions or observations maybe. Questions really. How many vacancies are we currently funding in non-crises counties versus crises counties? Do you have that data?

Jessica Kampfe: I can look for it, but I don't have it top of mind.

Rob Harris: Okay. And I don't know if you can have a different policy for crises versus non-crises. Like if we have more than X amount of unrepresented people or there's not... Say we're over contracted in one county, there's a vacancy... We're not going to hold this open for so many times because we want to free that funding up for the crises counties. I don't know if that's part of your policy or not. But I can see there being a reason to do that. Just at least for now during the crises. The second thing is on the paid family leave issue, now that only applies to businesses with over so many people employees, I think. Is that right? And those employees, they pay an extra payroll tax, and then the employee gets paid sort of like unemployment. But through the state, based upon the taxes or premiums the employer was paid. So, if that... And that's a state mandated one, I believe. So, if that's the case, that doesn't actually cost the law firm any extra

dollars because the state is paying that sort of like they would like unemployment.

The other cases where the law firm or the entity just might have either a union contract, I guess, or a policy that we are going to provide you with funding, if I'm right on that, then I don't know exactly how the state would develop a policy to compensate firms because of their policy that they've...their employment agreements versus a firm that doesn't or whether it's even the obligation of the state to do that. But when they said paid family leave, I guess I'd like to know a little bit more about what the people who are concerned about this feel they're obligated to pay their employees. Whether it's statutory or whether it's a company policy or employment contract. Do you know the answers? That's sort of complicated. I don't expect you to necessarily know the answers off the top of your head. But am I right about those issues, or do you know? What do you think about that?

Jessica Kampfe: Rob, with regard to your question on how many vacancies currently exist and where are they, I've asked the data team, and they said they can get that stuff pulled together by tomorrow, but we don't have it today.

Rob Harris: Okay.

Jessica Kampfe: Then there are multiple paid leave statutes. So, we referenced Paid Leave Oregon. There's also the Federal Family Medical Leave Act. And the FMLA has applied historically and will continue to apply I think differently than the Oregon statute. And I am not an employment lawyer, so I would feel really over [Inaudible 01:25:13] to give you a more detailed answer than that.

Rob Harris: Okay. Thank you.

Jennifer Nash: This is really tricky because on the one hand, we want to support contractors, and we understand that vacancies can't be filled right away. And it's difficult to fill them. And then there's the leave issues. But on the other hand, I mean, we can't pay for work that's not being done. I mean we have an obligation to the taxpayers, frankly. And I mean it's not popular to say this, but we also know that probably there are employers who are holding positions open and not filling them when they probably should be filling them. And then there is a large pool of money that collects that then is spent somehow that we don't know. This is the whole criticism of it's a contract system and not a direct employment system. And so there is... And that is especially problematic if there is a perception that that is happening in crises counties. And we've heard this from the people you would expect to hear this from.

Not public defense providers but all of the people who are complaining that public defense isn't doing enough. DAs, judges, other people saying, "Well, it's not fair because there are positions, and people aren't hiring for positions." And they were trying to be responsive to that. We're trying to thread a very difficult needle, and there's never going to be a perfect answer to solve all of the concerns. No matter what lever we push or don't push, it's going to have systemic impacts. And it's difficult to thread that needle, but we need to do that. So, are there other comments? Yes...?

[Crosstalk 01:27:26]

Peter Buckley: ...understand this. So, what would be the impact? I guess we don't have the data on it. But if I'm understanding this, the idea is we wouldn't recognize paid family leave as...we would not recognize it as a vacancy under the system. If we did recognize it [Inaudible 01:27:48] recognized vacancy, what would be the impact [Inaudible 01:27:54] financial impact for us?

Jessica Kampfe: It would be a financial impact. So, right now under our current policy, my understanding... And it is not formalized. But my understanding is that when lawyers go on paid family leave, they submit the [Inaudible 01:28:18] that's a vacancy notice to the agency. And so that vacancy is paid at 100% for the first 60 days. And then depending on the entity, it may be partially paid for an additional 60 days. So, the entity is currently receiving compensation for those positions when people are out.

Jennifer Nash: And the MAC is tied up.

Jessica Kampfe: And the MAC is... Well, the MAC is turned off. So, there's no case...

[Crosstalk 01:28:48]

Jessica Kampfe: ...can't move it. So, what this policy would do is it says that they have to notify us when somebody is on federal leave and that the position authority stays for up to 120 days but the compensation turns off, and the MAC expectation turns off. So, there's no expectation that they take cases, but we stop compensating the entity, and they have position authority for 120 days. It also says that if after 120 days or at any point in time that employee decides not to return from leave that the entity would then have the standard vacancy policy apply where they got 50% for that position for 60 days and then up to 120 because they would then start recruiting for the position, so we would treat it like a regular recruitment.

Jennifer Nash: So, why wouldn't we treat it during the 120 days with the...? Wouldn't it make more sense to treat the 120 days for leave like a traditional vacancy in that they

still get 50%? Because the whole reason we're giving 50% is you still have overhead, and you still have the other costs associated, you're just not paying the person. So, it seems kind of counterintuitive that you turn the 100% off, but if the person doesn't come back then they get 50% of the money back. That doesn't really make sense I don't think.

Jessica Kampfe: We could. I mean we could... Instead of reducing it 100%, we could treat it just like a...

Jennifer Nash: An extended vacancy.

Jessica Kampfe: ...regular vacancy where they get 50% of the [Inaudible 01:30:34] for the first 60 days. But instead of having it be only another 30 days, it's 120 days that the position authority stays with the entity because it's 12 weeks of leave that they could potentially have. So, we could make it the same as the compensation that we pay when somebody actually leaves but keep the position authority for 120 days instead of 90 days.

Susan Mandiberg: So, there's a tradeoff between...?

Jennifer Nash: That isn't what I was suggesting. Hold on. Just to be clear. That isn't what I was suggesting. I was suggesting if it's a vacancy due to paid leave we'd just give them 50% for the 120. And then if the person doesn't come back then the regular vacancy rules would kick in. So, it's kind of a hybrid. Right? So, it's different if a person leaves. Okay, now you have to hire someone. Versus, "No, they're coming back. They're just not picking up cases right now." So, it would be 120 days of 50%. And then if they say... Let's just say at the end of it they say they're not coming back or hiring, then the traditional vacancy policy would kick in, which means 60 more days. And it does extend that time, but it kind of has a foot in each world for the paid leave piece. 60 more days of 50%, and then 30 days of 0%.

Jessica Kampfe: That would mean that the agency was paying 50% on positions for up to six months.

Jennifer Nash: So, it would be... Yeah. As opposed to what we do now, right? I mean how long is the extension?

Jessica Kampfe: Right now, the agency pays 100% for two months, \$72,000 a year prorated monthly for two months. So, we pay less... We pay more on the front end, and then that 72,000 prorated monthly, and then it ends at four months. And so there isn't an additional three-month hiring [Inaudible 01:32:36]

Jennifer Nash: All right. That's something to think about. Commissioner Harris? You're muted.

- Rob Harris: I always make fun of people who do that time and again over a conference. But anyway. Can you remind me what the policy is if someone has a vacancy, not family leave but just they announce they have a vacancy, someone left, moved to Minnesota or something? Does that automatically immediately go down to 6,000 a month, or does that also stay at full for 60 days?
- Jessica Kampfe: Commissioner Harris, can you specify, do you mean current policy or the recommended policy for '25-'27?
- Rob Harris: What's the current policy, and what's the recommended policy in those situations?
- Jessica Kampfe: The current policy is that when somebody has a vacancy, the agency compensates at 100% for the first 60 days. And then the agency may continue compensation at that prorated rate of 72,000 a year prorated for an additional 60 days. That's the current policy. Full compensation for two months and then partial compensation for two months potentially. The proposed policy is an immediate reduction to 50% for two months and then no funding but position authority to rehire for one month.
- Rob Harris: Okay. All right, thanks.
- Jennifer Nash: Commissioner Reinhard?
- Brook Reinhard: Thanks. I'll be brief. When I was running a public defender's office, the thing I was most worried about is whether the people I hired for an upcoming law class would actually have a job that was funded, not whether vacancies would remain funded. I mean, yes, it's nice to have them remain funded, but the bigger issue is can people start working in August when I hire them. The quality of the lawyers hired in incoming law classes is far higher than folks who are floating through the year who you might be able to grab in April or October, or whenever. So, is there a way with our budgeting process that we can have floating FTEs? In other words, "Okay, Lane County doesn't need this funding in April because they don't have a position right now, but they certainly will in August." Is there a way to shift like that, or does that not work at all under the current budgeting model?
- Jessica Kampfe: So, we've moved to a mandated caseload model that involves caseload forecasting with the Office of Economic Analysis. So, they are forecasting what cases will come out each biennium. Because of the biennial forecasts, I believe they start in July. And so there is...the way that that forecasted model is built, it is not built for a whole lot of new lawyers to join public defense in September. And that is something that we may be able to work on over time as we refine

and recalibrate our caseload forecasting with [Inaudible 01:35:59] but right now that is a biennial forecast that is a July to July cycle. And this vacancy policy or any policy wasn't really built around the ability to hire for an incoming class. So, we will find out when the legislative session resolves how much MAC we are allocated for the next biennium. So, we'll find out in July based on the caseload forecast and the current service level budget for would be X. Right?

Like right now let's say it's 400 MAC. Maybe it goes up to 450 MAC. We'll have the ability to start telling providers they can recruit for those positions starting in July. And I understand that that does not align well with the law school hiring class. There's not a lot that we can do about that in terms of especially as we're dealing with a crises right now. Telling everybody, "We're going to wait and hire in September or October," is relatively tone deaf for the current environment of people sitting in jails without having lawyers. So, we're not really in a position that we can say to folks, "Yeah, sit on those positions and hire them in October instead of moving them now."

Rob Harris: Thank you.

Jennifer Nash: All right.

Peter Buckley: [Inaudible 01:37:36]

Jennifer Nash: Yes.

Peter Buckley: So, if a provider wanted to use something like paid family leave as a recruitment tool, this policy, given that the vacancy approval is good for 120 days, they could do that. They'd have to pay for it themselves. They'd get two months at 50%. And they would have to cover the rest of it themselves, right?

Jessica Kampfe: Under this policy, it would be totally unfunded. So, if the commission wanted, they could make it mirror the [Inaudible 01:38:07] office policy where it does get partially funded for the first two months. But, yes, they would have the position authority to do it. They'd have to self fund it.

Jennifer Nash: So, I'm interested in hearing others' input, but I have a lot of questions and some ongoing concerns about the pushing on one lever without fully understanding what would happen with the other, and I feel like there's more work that needs to be done on this particular policy. And I know that we need to move these along, but... I mean, we're in April. And if we didn't move the vacancy policy forward until May and did some more work on it, I...

Jessica Kampfe: I don't think it would end up in our next contracts. Because our contracts have to go through the Department of Justice approval process. We're pretty tight on

the timeline to get stuff over to them now. So, I think if the commission doesn't look at this until May that it will not make it until our '25'-27 contracts.

Jennifer Nash: Well, I guess we could just take a vote on it and see where we end up.

Susan Mandiberg: So, if we don't vote this today, we stick with the current policies that you've outlined for Commissioner Harris?

Jessica Kampfe: Right, so it would be 100% funding for two months and partial funding maybe allowed for two months.

Susan Mandiberg: And the problem with sticking with the current policy is what? So, we have all kinds of problems with the new policy. What specifically are the problems with the current policy so we can weigh problems against problems? [Laughs]

Jessica Kampfe: Sure. 100% funding for vacant positions for the first two months [Inaudible 01:40:09] compensates entities for vacancies, and hopefully it incentivizes them to not fill positions. Because if I can receive 100% funding but I'm not paying anybody's salary, that's just profit to my entity that I can then use to fund other expenses like raises and that kind of stuff for my staff. So, we are paying them 100% even though their expenses are not 100% for the first two months.

Susan Mandiberg: So, let's say you have an entity like a private nonprofit that has had the practice for years of hiring a class in September. Which has a lot of benefits including the benefits of being able to put those people through a training process as a group and not having to do it over and over again. It's more efficient among other things I would imagine. And let's say that under the current policy that entity is not filling vacancies. Not so that they can have big parties, and get raises, and that kind of thing but so they can have a fund of money available and a fund of vacancies available to be able to hire that class for the fall.

Jessica Kampfe: And they don't need the money to hire the class. The positions...

[Crosstalk 01:41:44]

Susan Mandiberg: The positions.

Jessica Kampfe: ...are funded in the fall [Inaudible 01:41:46]

Susan Mandiberg: So, if the problem or one of the problems for providers is the cadence of when new lawyers are available versus when vacancies come up, is there a way to coordinate the vacancies and the money so that entities that have that practice can build up [Inaudible 01:42:23] fund of the money that they need and the

vacancies they need in order to have that business model. I guess I'm not asking...

[Crosstalk 01:42:28]

Jennifer Nash: Well, they have money though. If they're going to hire... I'm just making stuff up. If they're going to hire 20 people in September, the agency is going to fund 20 people in September. If that's available. They've always done that. Especially in crises counties.

[Crosstalk 01:42:42]

Susan Mandiberg: ...vacancies [Inaudible 01:42:43]

Jennifer Nash: Well, the money is being accumulated, and the vacancies are not being filled. And we know that attrition...we've learned and now know that attrition is a...attrition and the crises counties are inextricably linked. And so by not filling these vacancies in the middle of the year and taking 100% of funding for them, we are exacerbated a problem of unrepresented people because [Inaudible 01:43:12] So, I mean, I suppose a middle ground would be 60 days and you're done, which is the equivalent of four months at 50%. So, if we don't adopt this policy and just stick with the current policy, the agency could just be very stringent about when if at all they allow any extensions for the 60 days. So, you get your 60 days of [Inaudible 01:43:42] any more time. I mean, what do you think that impact would be? I'm not suggesting that we should do that. [Inaudible 01:43:50] I'm asking what the impact would be if that happened.

Jessica Kampfe: Yeah, I think it's really hard to [Inaudible 01:43:58] in 60 days, so I think we would see a lot of entities struggle to fill those positions in 60 days. And when you're recruiting for a job, it's really hard to recruit for a job if you don't know you have position authority to hire it. Right? If I'm trying to bring you on, and I say, "Hey, Jennifer, I'll ask permission for you to start in July, but I don't know if I'm going to have authority," you're less likely to take that job than a job that you know is going to exist in July. So, I think it would have a detrimental effect on recruitment for us to say 60 days or a position is done. The commission could potentially just instead of saying get 60 days of full funding, 60 days of 50% funding and then otherwise keep the current policy the same.

And, Susan, to your point, our system does not align well with the practice of hiring a starting class in September. I mean law firms are making those offers to their students in September and October of their third year of school, and they would love to be able to say, "We have a guaranteed position for you in 12 months when you finish and take the bar exam." And our model doesn't fit that. And so I think that people have done what they can within the structure and

framework that we've built for them, and there does need to be a bigger conversation about how we create [Inaudible 01:45:37] because that is an important recruitment tool.

Jennifer Nash: All right.

Susan Mandiberg: Especially when firms are recruiting people outside of the Oregon...the three law schools in Oregon. I've seen over the last number of years an increase in recruiting people from out of state.

Jessica Kampfe: Yeah.

Susan Mandiberg: I think [Inaudible 01:46:06] virtually all public defenders came from one of the three Oregon law schools. I don't think that's true anymore.

Jessica Kampfe: And that's a program that the agency could work to develop and implement with providers. I don't think that the vacancy funding policy is the place to make that [Inaudible 01:46:23]

Jennifer Nash: What was Commissioner Lipscomb's comment in the chat box?

[Crosstalk 01:46:29]

Female: Just that he had to leave early.

Jennifer Nash: Okay. Okay, so I'm going to... What are commissioners' thoughts about changing the policy to be 50% vacancy funding for 60 days?

Jessica Kampfe: So, our current policy but instead of 100% for the first 60 days dropping it down to 50%.. for the first 60 days.

Jennifer Nash: Right. Does anyone think that may be a better policy or not? Or thoughts? Commissioner Lininger?

Tom Lininger: So, I share your intuitive reaction that in the midst of this crises paying the full amount for vacancy is worrisome. It's a tradeoff in resources. We could be spending that money to support actual lawyering. So, to me, 50% for 60 days sounds preferable to 100% for 60 days. In response to your question, I think that that's a good amendment.

Jennifer Nash: Commissioner Harris, what do you think about current policy, but we change it to 60 days? I mean sorry, we change it to 50% for 60 days instead of 100%.

Rob Harris: Well, I've always supported that idea that if you're not paying the salary to the lawyer who departed then that's not an expense you have on your books, and that makes perfectly good sense to me. And I think it's a balanced approach.

Jennifer Nash: Other commissioners who are here, thoughts about that? Commissioner Buckley?

Peter Buckley: Isn't that the policy that we have before us?

Jessica Kampfe: The policy you have before you is more complicated than that. It's a bigger change than what the commission is currently discussing.

[Crosstalk 01:48:28]

Jennifer Nash: What do you think, Commissioner Mandiberg?

Susan Mandiberg: Well, it seems to me... And I can't claim to understand all the details of this very well. I'm finding it confusing.

Alton Harvey Jr.: Me, too.

Susan Mandiberg: That being said, I think, first of all, there's evidently no really good answer to this, so it's a choice between which of these approaches is the least awful.
[Inaudible 01:48:56]

Alton Harvey Jr.: [Inaudible 01:48:58]

Susan Mandiberg: Okay. And that being the case, I think it kind of comes... And correct me if I've got this wrong. But I think it kind of comes down to whether we favor providers or whether we favor people accused or crimes who are sitting around without lawyers. Do I have that right? And I think if that's the situation, I think our moral and legal obligation is to favor providing lawyers for people who are sitting around without them.

Jennifer Nash: That's the needle we have to thread.

Susan Mandiberg: That's the needle we have to thread. And I'm willing to hear the opinions of people who understand this better than I do about the right way to thread the needle. But it seems to me that this 50% for 60 days seems to maybe be the right way to do it.

Jennifer Nash: Do you have thoughts, Commissioner Harvey?

Alton Harvey Jr.: I mean I generally on the outside kind of understand. But for me, I like the way Commissioner Mandiberg explained it. I feel like I feel like the best way to go is the way that's going to be the best to serve the people who are being represented. But then I feel like the attorneys... I'm torn. I'm kind of torn. So, I mean I don't know. I don't really understand it all, but I like the way that Commissioner Mandiberg explained.

[Crosstalk 01:50:49]

Jennifer Nash: Oh, I'm sorry. I did not see that. Commissioner Reinhard?

Brook Reinhard: Just like with the previous item, it seems from the comments here that we don't...myself included...do not fully understand the difference between the old policy and the new policy. And we're now talking about the simplified idea of 50% for 60 days. That makes sense, but I feel that we're losing a lot in the analysis when we're talking about contracts that are going to be offered for two years, and this doesn't seem ripe for a vote today. That's my only point. And I mean if I had my perfect world it would be 50% for 60 days, and then you can apply for 50% more for 60 days if you're still making diligent efforts to hire someone. And you've still got to pay the support staff or who you are funding. I agree with Rob. Let's not pay people who aren't on the books. But if there are support staff costs, let's continue that. And this doesn't seem ready for a vote yet. I understand we have contractual constraints, but I've never signed a contract with OPDC that has not been an unmitigated disaster of contract law. And it appears we're heading in the same place where we do this raft of items all at once.

Jennifer Nash: All right, so let's... Thank you, Commissioner Reinhard. So, let's be very, very clear about what a motion might look like. So, why don't you, Director Kampfe, tell us again what the current policy is with changing it to 50% [Inaudible 01:52:20] So, outline specifically what...if we adopted a motion today that was the current policy except it would be 50% funding instead of 100%, what would that be?

Jessica Kampfe: The current policy is for the first 60 days of a vacancy, the agency fully funds that vacancy.

Jennifer Nash: And that would change to 50%.

Jessica Kampfe: And that would change to 50% under what the commission is talking about. And the current policy is permissive with regard to the agency funding for 120 days at \$72,000 a year prorated monthly.

Jennifer Nash: What does that mean, prorated monthly?

[Crosstalk 01:53:11]

Jessica Kampfe: ...\$6,000 a month.

Jennifer Nash: And is that 120 additional days or 120 days total?

Jessica Kampfe: 120 days total.

Jennifer Nash: Okay.

Jessica Kampfe: The 120-day extension is not applied evenly across all provider days.

Susan Mandiberg: The 120 days includes the first 60 days or...

Jessica Kampfe: It's four months total.

Susan Mandiberg: Four months total. Okay.

Jessica Kampfe: And I am asking the TSMD [Phonetic 01:53:44] folks right now to tell me what the limitation is on who gets the 120-day extension because it's not [Inaudible 01:53:54] So, they're looking that up for me. We can come back to this and move to contract compliance, or we could potentially...

Jennifer Nash: So, a couple comments. One is that I know we are way off the agenda, but I also know that this is the agency's and the commission's most pressing matter for today. And we are schedule to have a break at 11:05, and the really hard timeline that we have... And we've got a presiding judge briefing at noon. And we have attorneys who have taken time out of their day to come speak with us at 12:15. And so I intend to adhere to those times. But the other times will be flexible. Also understanding that we need to drive back some of us to Portland. So, I'm going to do as much as I can. So, with that, I think the best use of our time now is to wait until you have the additional information on vacancies and move on to contract compliance. And then we can hopefully circle back around.

Jessica Kampfe: I do have it.

Jennifer Nash: All right, thank you.

Jessica Kampfe: So, the additional 60 days currently only applies to the following entities. Nonprofit public defender offices, law firms with more than one members that contracts directly with the agency, and law firms within consortia that have one or more members taking public defense.

Jennifer Nash: And that makes sense, of course. Because if you're a single person, a single provider, and you're vacant then you're... Vacant. So, okay. All right. So, just to be clear, let me ask, is there a motion to adopt a change to the vacancy funding policy that would be consistent with the current policy that the agency has except that during the first 60 days of any vacancy that position would be funded at 50% instead of 100%?

Tom Lininger: Commissioner Lininger, so moved.

Jennifer Nash: Is there a second?

Alton Harvey Jr.: Second.

Jennifer Nash: All right. And we need a vote.

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: All right, thank you. I know that was a very long and protracted discussion but I think also very important and very necessary. So, let's move on to contract compliance policy change.

Jessica Kampfe: Thank you. This policy change would give the agency more tools to enforce contract compliance in our contracts. And so it does a couple of important things. First, it sets out a process by which we would engage with providers around contract compliance issues. And I'll bounce back over to the right tab here. So, the policy says that when a contractor agrees to accept appointments to represent clients they do so in compliance with the contract terms as well as the [Inaudible 01:57:53] rules of professional conduct. That they are to monitor their case assignments for the lawyers that are performing work under that contract to stay within 15% of the contract under both the PCR model, which is a longstanding rule, and the MAC rule, which was adopted in the last contract cycle. That the contractor agrees to monitor that the [Inaudible 01:58:25] under this contract are qualified to do so.

And that individual lawyers fulfill their performance standard obligations for their new clients. And it has enforcement provisions which are different from what currently exists in our contracts. So, the enforcement provisions would indicate that when somebody is not in compliance with the contract terms... And that could mean not in compliance because they are not within 15% of the contract maximum or not in compliance because of a quality performance issue. That OPDC would start by meeting with the contractor to discuss the circumstances leading to the lack of the ability to meet that performance expectation. And we would identify what the causes are. So, potentially changing filing trends within the jurisdiction, whether or not it's a lawyer's ethical responsibilities that is keeping them from taking at least 85% of their contracted caseload, whether there are other sort of performance issues. So, we would have a meeting with the contract administrator to identify what is leading to the performance issue.

We would then work with a contractor to develop a plan to bring the contractor up to the contract expectation. And so we'd have basically a performance management plan with the contractor to bring them into compliance. And those performance plans could include requirements that the contractor accept or refrain from accepting cases unless doing so would cause them to violate the rules of professional conduct. That the contractor accept cases from neighboring jurisdictions. If, for example, there's decreased filing trends for juvenile in Multnomah County, that they take cases [Inaudible 02:00:30] in Columbia County. That type of a thing. Requirements that the contract complete a training program or that the attorneys participate in a mentoring program.

At the end of the performance management plan, the agency would decide whether or not it was necessary to impose corrective actions. And corrective actions could include withholding a percentage of contract funds for up to 90

days within the... And the contract funds we're looking at withholding are between one and five percent of the contract funds. The reason the agency identified that percentage is because all of our contracts have administrative fees on them, and the administrative fees are five percent. So, the agency is not targeting MAC with that corrective action. We are targeting the administrative fees that are on the contract with that corrective action. The corrective action could include reducing the FTE within a contract or reducing the attorney's qualification level.

So, if a lawyer is measure 11 qualified, and there is a performance issue, we might reduce them to a minor felony qualification until that performance issue is rectified. Or we could require more intensive mentoring or oversight, or terminate the contract. This is both a better explanation of what the process would be to performance manage a contract, and it's an additional new tool for the agency. Because under our current contract terms, we say that we can withhold contract payments, but withholding is different because we pay the money back to them. This would actually reduce the payment within that one to five percent. So, it would be... We would keep the money that we withheld and then turn that back on when the problem is rectified. But we would not give them a back payment for the money.

Jennifer Nash: So, the policy actually doesn't say that. So, I would say we should change the first word in 4A to reduce instead of withhold because it still has the withhold language.

Jessica Kampfe: Thank you.

Jennifer Nash: But I really appreciate the work that was put into this. I think it provides a lot more clarity for everyone – for the agency, for contractors, for everyone. A lot more transparency about what's expected and what would happen if the expectations weren't met. So, thank you for all of your hard work on this. Are there questions or concerns about this policy? All right. Is there a motion to adopt the policy with the change to 4A? Instead of withhold an increment of one percent, it would be reduce an incremented one percent.

Alton Harvey Jr.: So moved.

Jennifer Nash: All right. And a second?

Susan Mandiberg: Second.

Jennifer Nash: All right, and a vote?

Female: Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Alton Harvey Jr.: Yeah.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Female: Thank you.

Jennifer Nash: All right. Thank you very much. And it is 11:05. Time for our break. Just a couple comments before. I'm going to... I believe it was Commissioner Harris during our work group who made the comment that this really... We want to point out that the actions that the commission and the agency have taken in these contract changes is a step towards...a significant step towards trying to ameliorate the issues with the unrepresented persons crises. We've been given, as everyone knows, really strong direction, as Commissioner Harvey has pointed out, to try to solve this problem within current budgetary constraints, which is, as we know, impossible. But this is a significant step towards trying to address some of the issues that will be able to, we hope, ease some of those issues. It is not by any means going to solve that problem, but it should help with some problems that the agency has identified. And we appreciate very much the agency's work on that. And with that, we'll take a 15-minute break and be back at 11:20. And the next item we'll take up is the action item regarding the audit committee member confirmation. And then we'll move to the updates and get through as many of those as humanly possible in as short a time as possible. Thank you.

[No dialogue]

Jennifer Nash: ...approving audit committee members and new audit committee members. Director Kampfe.

Jessica Kampfe: Thank you. So, our audit committee has two vacancies on it right now. The committee members went through a recruitment process and would like to add the two additional members that you have listed in your packet. They would also like to reappoint the existing audit committee members. And the agency is recommending that the commission appoint the two new members and reappoint the existing audit committee members. I will note that Commissioner Harris is the commission's liaison to the audit committee, and he may have follow up information for the commission.

Jennifer Nash: Commissioner Harris, do you have anything you'd like us to know?

Rob Harris: No. I have reviewed the backgrounds of the two proposed members, and I would concur that they are qualified and capable, and I would recommend that we approve them, as well as reapprove the current members. Thank you.

Jennifer Nash: All right. Can I treat that as a motion from you?

Rob Harris: Yes.

Jennifer Nash: All right. And is there a second?

Susan Mandiberg: Second.

Jennifer Nash: All right. We're ready for a vote.

Female: All right. Commissioner Nash?

Jennifer Nash: Yes.

Female: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Female: Commissioner Harvey?

Jennifer Nash: He stepped out for a moment.

Female: Okay. Commissioner Buckley?

Paul Lipscomb: Yes.

Female: Commissioner Buckley?

Peter Buckley: Yes.

Female: Commissioner Harris?

Rob Harris: Yes.

Female: And Commissioner Lininger?

Tom Lininger: Yes.

Female: That is a quorum.

Jennifer Nash: That's fine.

Female: Thank you.

Jennifer Nash: Yes, thank you. All right. Thank you very much. Next, moving on to the update regarding unrepresented persons in Oregon courts, attorney shortage.

Jessica Kampfe: Thank you. Mara, would you be so kind as to pull up those slides?

Mara: Yes.

Jessica Kampfe: In addition to the agency's presentation on unrepresented, the commission has in its materials a report from the Oregon Judicial Department on unrepresented persons. And today offers an opportunity to have a more focused conversation, particularly in Jackson County, as we will be hearing later today from the presiding judge in Jackson County, as well as public defenders that are working here locally. So, turning to our data report on unrepresented persons. Next slide please.

We can see the statewide trends for unrepresented persons across the state of Oregon have remained pretty consistent with what we've been seeing for a while. That the in custody numbers are largely stable, and we've seen a gradual increase in the out of custody unrepresented persons population. We have a few slides that are looking really just at Jackson County today. If you could go on to the next slide. So, the news is actually better in Jackson County than it is statewide. And so we have seen a decrease both in the in custody and out of custody unrepresented populations in Jackson County. I will note that one thing that Jackson County has done consistently well throughout the crises is really strong coordination among the providers and the bench to focus on the in custody unrepresented population and making sure the folks that are in custody

are assigned counsel. So, even though Jackson County has been one of the worst crises counties in terms of the largest population of unrepresented people, throughout the crises they have consistently prioritized that unrepresented population and managed to keep it down. And it continues on a downward trend.

The biggest change is that we're now starting to see a downward trend in the out of custody population as well. So, we are looking at what might be impacting this. Next slide please. And looking at the data from our unrepresented assignment coordinator. So, this is work that OPDC is doing directly. I want to note before jumping into this that the vast majority of cases that are assigned in Jackson County are assigned through contractors. That's not the unrepresented folks. So, after contractors take all the cases that they're taking under the contracts, somebody ends up on the unrepresented list. Our assignment coordinators start looking to identify counsel for those individuals.

And one of the really significant changes that we see happening in Jackson County is the trial division. So, you can see in the dark blue the number of cases that are being taken by the trial division off of the unrepresented persons list. So, historically the unrepresented persons in Jackson County have largely been hourly with some contractors. And now, we are still seeing contractors take unrepresented cases, but the trial division is having a larger impact than the hourly programs in Jackson County. So, that is part of what we are identifying as a reason why we're starting to see the numbers come down in Jackson County.

This is a more statewide look. So, this is the Betschart assignment work that our assignment coordinators are doing statewide. And you can see that the trends in this have been pretty consistent with the majority of the cases being assigned in the crises counties. And in total, our assignment coordinators have assigned 2,084 Betschart cases for 1,400 clients. And so these are all cases where the person would have been released if we weren't able to identify a lawyer for them within the first seven days. Our assignment coordinators focus on our tier one cases. Those are cases where the crime type creates a public safety concern. And so we've been really successful in assigning a lot of people counsel through this program.

Jennifer Nash: Before you move on, I think it's worth talking about the types of cases that are being assigned under Betschart and how that intersects with maybe the expectations of the state trial division and how those have ended up being a little bit different than the original concept.

Jessica Kampfe: Sure. So, when the trial division was first opened in Jackson County, it was established through Senate Bill 337, and the concept was that they would work on taking unrepresented persons cases. And the legislature gave us position

authority for senior deputy lawyers, thinking that they would be taking homicide cases, most serious person to person felony cases as the primary bulk of their workload. Later in 2024, the legislature passed House Bill 4002, which recriminalized drug possession. That came with some additional positions, and so the concept there was that our trial division lawyers would be taking primarily drug cases. What we are seeing is that our providers under the contracts, they show up every day at arraignment and take cases under the contracts, and they are targeting the in custody unrepresented...the in custody population, sorry, not the unrepresented population. The in custody population.

And then it's the cases that aren't assigned under contract that end up on the unrepresented list where our assignment coordinators start looking for lawyers to take cases. And they're looking for lawyers to take cases in a couple different ways. They are contracting contractors and asking if they can take the cases under contract. We're also reaching out to private bar lawyers hourly, and those folks tend to be more likely to say yes to cases that are paid at a higher hourly rate. Our most serious crime types are paid at a higher hourly rate. And then they are also looking to our trial division to take cases. Our trial division takes cases that are those tier one priority cases. But they tend to get the cases that are tier one priority but at a lower case type because they have a lower case rate.

So, the tier one priority cases that fall within that category are largely domestic violence cases. You're going to get a lot of misdemeanor and minor felony, domestic violence in those categories. Our trial division does take more serious crime types, but I think initially when the division was established there was an expectation that they would be taking the most serious crime type. What we've seen as these three programs work together, the contract program, the hourly program, the trial division program, is that the hydraulics are such that we see trial division taking more of those misdemeanor and minor felony cases.

Jennifer Nash: Well, and also they're more easily and readily available for appointment of Betschart cases, which tend to be largely those domestic violence and [Inaudible 02:29:45] misdemeanors. By population, those are the most significant, right?

Jessica Kampfe: Right. So, the Betschart cases we're seeing almost 80% of Betschart cases are misdemeanors and minor felonies. So, we would expect that if trial division is focusing on taking a lot of those cases that they would also be taking largely misdemeanor and minor felony cases.

Jennifer Nash: Thank you.

Jessica Kampfe: And then the last slide that we have is a report out on our temporary hourly increase program. So, this shows actual expenditures that the agency has paid

through this program. You can see what those expenditures look like [Inaudible 02:30:22] This is money that is walked out of our door. So, it's not the invoices that are sitting in the queue, and it's not billing that we haven't received yet. But this is the payments made. The program has successfully provided representation on 8,500 cases, so that's a lot of cases. The total unrepresented population is less than 4,000, so this is double that. You can see where we would be at as a state if we hadn't had this tool available to us. And they have provided representations...the lawyers have provided representation for 5,600 clients.

Jennifer Nash: But this program is scheduled to end at the end of...?

Jessica Kampfe: This biennium.

Jennifer Nash: ...this biennium.

Jessica Kampfe: It is scheduled to end at the end of this biennium. There is a current policy option package to extend it. Although I am not hopeful that it will be extended. I think we need to be planning for it ending at the end of this biennium.

Jennifer Nash: And the commission has already approved hourly rates for its policy option package that are near that, but the funding for those at this point...still up in the air from the legislature, correct?

Jessica Kampfe: That's correct. That is one of the pieces of legislation that is currently pending. And I would expect that we are likely to see our hourly rates return to something more similar to what we had before, which is the \$130 and \$145 an hour rates.

Jennifer Nash: Which I would think could potentially be problematic because the THIP program has been pretty successful, as we can see, with recruiting private bar what I like to call part time public defender lawyers into the system to take cases that we'd not otherwise have been able to find attorneys for. So, just to be clear, the commission is... This is not something that's under the ability of the commission to do anything about. Depending on the funding that the legislature provides, it's going to dictate what the hourly rate will be. So, providers, I know, have a right to ask in public comment about that, and I would suggest that it would be a very good use of time for providers to write to their legislators, especially those on ways and means, to talk about the hourly rates and the impact that it would have if they were reduced to a level that would disincentivize lawyers taking cases at an hourly rate.

Jessica Kampfe: And, Commissioner, to just make your point a little bit more. The Betschart assignment coordinators that are assigning cases hourly, those are all THIP cases

because they're all in custody, so they all qualify for that. So, we've seen that our assignment coordinators have provided the majority of this assignment of about 1,300 cases under the THIP program. It is a program that is pretty critical to the unrepresented response that we've been able to [Inaudible 02:33:51]

Jennifer Nash: [Inaudible 02:33:53] unrepresented report? Are there any questions or comments? [Inaudible 02:34:00]

Peter Buckley: Just looking at the numbers there, it comes to, what, \$6,600 per case. [Inaudible 02:34:11] cases. Pretty impressive.

Jennifer Nash: Thank you. Moving on to Mr. Amador and the budget update. Thank you driving down to give us your budget update.

Ralph Amador: Of course. [Inaudible 02:34:38] Chair Nash, Vice Chair Mandiberg, members of the commission.

Female: I think you have to be over there.

Ralph Amador: I have to be over there?

Female: Yeah.

Ralph Amador: Oh, okay. Even better. [Inaudible 02:34:51]

[Crosstalk 02:34:53]

Jessica Kampfe: [Inaudible 02:34:51]

Ralph Amador: Okay?

Jennifer Nash: Hold on. Let's see if you're showing up... There you are. Okay.

Ralph Amador: All right. Chair Nash, Vice Chair Mandiberg, members of the commission, my name is Ralph Amador of the Oregon Public Defense Commission here to present the budget presentation for the period ending February 28th of 2025. Here we have the adult criminal budget. We're showing a favorable balance of 9.5 million dollars with the spending plan that's in place. They're currently spending at 79% of their budget to date. You'll notice that 8.3 million of this will go into the budget realignment that was passed recently by the legislature. And they're actively working a plan to manage the built in projections at this point. The juvenile division is showing a modest overage, which is down about \$50,000 from the last time we looked because of some changes. There is some money in

the budget realignment that's going to cover this, and they're spending according to their plan.

Parent-child representation program is showing a pretty significant overage here, and that's because there's not enough qualified expenditures in the program to draw down the appropriate level of [Inaudible 02:36:24] funding. There has to be... So, we have to cover that with general funds, and it can't draw down [Inaudible 02:36:32] expenditures. So, in the budget realignment, we're asking for money to cover this. And when I talk about the budget realignment, there's a chart at the end of this that will show [Inaudible 02:36:44] money within the agency to cover some of these shortages. The next few slides are preauthorized expense and court mandated expense. We're showing a pretty significant overage here, and this is because the commission made policy changes back in April to, one, allow attorneys to bill monthly rather than billing at the end of a case, and you're going to see a [Inaudible 02:37:14] in the court mandated expenses as well.

But this is because there's a lot more providers. This will not be 11 million [Inaudible 02:37:21] because we're moving 7.4 million dollars of money into this program, so it will be less when we run March projections. But it is significant. And we're watching this on a weekly basis to monitor the expenditures. This represents investigations. This represents psych charges. This represents other experts that go along with the cases. We have four assignment coordinators who are actively assigning cases. So, they're covering a caseload on a greater scale, and with that comes more expenditures and definitely more [Inaudible 02:37:58]

Jennifer Nash: This is money out the door?

Ralph Amador: No, ma'am. Currently, [Inaudible 02:38:04] out the door. The plan is part of the projections that we're seeing on a rolling average of the last three to four months.

Jennifer Nash: Okay, so that's how you're... You're not doing it based on authorizations, you're doing it based on the expenditures from prior months.

Ralph Amador: Yes, ma'am.

Jennifer Nash: Okay, thank you.

Ralph Amador: That would be [Inaudible 02:38:23] Yes.

Jennifer Nash: And that's through the end of the biennium?

Ralph Amador: Okay.

Jennifer Nash: These are our projections for the end of the biennium. Court mandated expense is showing a 6.8 million dollar raise. Again, this is the hourly...assigning more hourly attorney costs. And they're able to bill monthly. And we would have realized these costs eventually, but because they're billing monthly instead of waiting 6 to 12 months to bill at the end of the case now we've made it more profitable for people to take cases. It's working as an incentive for folks to cover cases because you're going to be paid next month rather than carrying the cost for the remainder of the case levels. We're putting 1.6 million dollars more into this program through the budget realignment. But again, we're going to be looking... We're watching these on a weekly basis. We check the totals in [Inaudible 02:39:15] every Monday because everything wraps up on Fridays. But, again, we're watching this, and we have had conversations [Inaudible 02:39:23] do know that this is going on. So, again, [Inaudible 02:39:28] get the new March numbers in to see how close we are.

[Inaudible 02:39:35] trial representation or the Oregon Trial Division, whichever we're going to call it. This is spending as we expected it to spend. Some of the savings will go into the hourly programs as well in the budget realignment. I think it should be at full staff at this point, and there aren't any other issues going on. Most of this savings is because [Inaudible 02:39:58] We expect that next biennium these savings should not be there because we'd be at full staff and [Inaudible 02:40:08] more cases at that time.

Trial division. This is showing an average that we're actually bringing money in through realignment. This is because we had a salary adjustment based on some bargaining that was realigned. So, we had to pay out some more funds to people who were under compensated, and we're fixing that. Most [Inaudible 02:40:34] into this area so they can [Inaudible 02:40:40] reporting for [Inaudible 02:40:43] Next slide.

Compliance audit performance division. This is performing as we think it should perform. This is showing some savings basically because we've had some vacancies over the course of the biennium. Some of this money will go towards the hourly programs, as well as the realignment. Again, whatever savings we have there we'll try and spend it wisely. ASD. This is the administrative division and the executive division. Again, we have savings there because we've had some contractor savings. We've had some vacancy savings. But there's not a lot here. Again, some of this money will be moved over in the realignment as well. So, it'll be a smaller number next month when we go through it.

[Inaudible 02:41:38] case management. This will be moving some money as well over. This is a program that it's been talked about. And just because of the

procurement process, it's taken a while. The money we've had is just sitting there and goes into savings because it's not being spent at this time. Next biennium when we...if we're awarded more money through this project, [Inaudible 02:42:00] because we should be in contract by that time. And [Inaudible 02:42:04] an off the shelf program to continue going forward at that time. Last but not least, it's the special programs, contracts, and distributions area. The only thing left in this area is really discovery. And because we just pay discovery as it comes in, there's no real guardrails on it. It's projecting to go over a little bit, but we can't go by this budget. We can only pay the money we have at this time. So, last thing is...

Jennifer Nash: So, that just means we stop paying for discovery [Inaudible 02:42:42]

Ralph Amador: Yes, ma'am.

Jennifer Nash: Okay.

Ralph Amador: This is what our bottom line looks like today. I'm sorry, not today but at the end of February. The March numbers will tell us something differently. But we're looking at a 5.7 million dollar hole at the end of the biennium that we'll have to try and cover. And then the last line is just... This is what's happening...what has happened when we're moving money around. [Inaudible 02:43:10] trial division cap exec ASD and put it in the juvenile parent-child representation and court authorized expense, court mandated expense. And so it's worth noting that in both preauthorized expense and court mandated expense, we've put I think close to nine million dollars into each of those programs to try and mitigate the expenses along with the hourly programs. And we'll just keep [Inaudible 02:43:32] if we can.

Jennifer Nash: [Inaudible 02:43:36]

Ralph Amador: [Inaudible 02:43:38]

Jennifer Nash: Do you have... You probably don't have it, but it might be helpful for us to be able to understand this to be able to see how many cases were assigned under the hourly...regardless of what the hourly program. So, let's just say court mandated expenses. Up until January of 2025 versus how many from January 2025 until now. Because I think my guess is that with the [Inaudible 02:44:17] new assignment coordinators that rate has really increased, and I think that would probably be beneficial, especially to the legislature to explain why it is that our expenses are so much more than we thought they were going to be [Inaudible 02:44:34]

Ralph Amador: Chair Nash, we are actively doing that analysis so that we can see it. And it really started about October-ish is [Inaudible 02:44:43] people that we have come on board and when we started outperforming our expectations [Inaudible 02:44:51] THIP. We had budgeted...when we did the realignment, we had asked for additional...we forecasted more in the THIP areas, which is what the 1.6 was to cover. Because we said we were going to [Inaudible 02:45:04] THIP. What we did see was the other hourly stuff. And the problem with the hourly stuff is that we can't see because there is 20-something jurisdictions that assign cases however they assign cases in each area, and we don't see those until we get the bill.

And when that bill comes, it's a monthly bill that's going to keep coming for the duration. We're trying to create data reports that will predict by case type how much we can expect to come from these bills and everything else at this point. But it's just for a budgetary person like myself, that kind of person, it's very scary to have things flying from behind that you can't really see, and there's no way to... We have our program analysts. When I talked to them, they were like, "There's not a whole lot we can do to help you because we're not in every jurisdiction. We're talking to people and seeing how things are going.

Jennifer Nash: So, ultimately, pie in the sky. Having an assignment whatever [Inaudible 02:46:06] but an assignment coordinator that's a single entity that's assigning cases would be very beneficial for budgeting purposes, right?

Ralph Amador: Sure, Chair Nash. That would be my ideal world where we had somebody in each jurisdiction assigning cases out off the docket everyday to whoever they [Inaudible 02:46:25] And when I talked to folks in Massachusetts, they asked, "Why don't you have that?" And I'm like, "I don't know."

Jennifer Nash: All right. So, what's the plan, Mr. Amador?

Ralph Amador: The plan is to continue monitoring expenditures through March. If we have to ask for supplemental funding, we will. But we want to be sure so that we don't end up with money on the table, so we're doing analysis on what we've seen so far, what's going out there, trying to compare it to any forecasts that we have because we don't have really the forecast for this biennium. And just trying to see what the trends are and do some trend analysis to figure out where we can see more hourly cases coming up. So, if we have to go ask for supplemental funding, we'll ask for it with the confidence that we're going to do this.

Jennifer Nash: Right. Thank you. Does anyone have any questions for Mr. Amador? All right. Thank you, Mr. Amador. [Inaudible 02:47:26] Thank you. All right. Moving next to the Oregon Trial Division briefing from Ms. Bartholomew.

Alyssa Bartholomew: Good morning, Madam Chair and commissioners. My name is Alyssa Bartholomew. I am the senior deputy defender in the Southern Trial Region Division down here in Medford. I just wanted to give you guys a little brief update on what we have done since we opened our doors back in January of last year. First slide. So, I pulled this slide up because I think it shows a little bit of what our MAC capacity would be if we made [Inaudible 02:48:15] The numbers that you see here are we currently have four attorneys that are in our office including me that take some cases. I currently have three homicide cases and one double homicide case. Other than that, my attorneys down here, we've got four of them. Two are deputy defenders. Two are senior defenders. And of that, all of them are over their MAC by quite a bit. The only one that's not is Mr. Allen [Phonetic 02:48:39], and he's at 97. So, if you look at the MAC equivalent, we're all over 100% if you take into that MAC equivalent. Next slide.

Since January of 2024, so just four months ago, our office has taken 612 cases. What that equates to is we've got 163 here in Jackson County, 40 in Klamath Falls, and 6 over in Douglas County. We started with 326 cases that were handling back in December of 2024. And as of today, our cases are up to 685 cases that we have taken. So, we have more than doubled that amount in just a short period of time, about four months. Next slide.

The cases that we've resolved just since the beginning of January is as follows. If you look at this, you can see there are a number of cases that we've taken that have been resolved in very good manners. We've gotten cases that are going to the DUI diversion program down here, conditional discharge. We have had cases that are in specialty courts down here. A lot of the cases we've had have been dismissed. I attribute that to the fact that we have these wonderful investigators. We have two investigators that work in our office. They work in all of the counties. They go to Douglas County, over to Lincoln County, and in Jackson County. Their work has been highly [Inaudible 02:50:10] in making sure that we have good results for our clients.

In addition to that, our case manager, she has done a phenomenal job as well with outreach and being able to get mitigation information so that we can get these cases resolved in a good and timely manner. Next slide. I just want to touch on just a couple of the [Inaudible 02:50:32] outcomes that we've had since joining the office. We've had so many great victories for the trial division. We've had attempted murders that we had bail reduced down by \$330,000. We've had measure 11s and firearm [Inaudible 02:50:48] that have been dropped. Clients have been put into treatment facilities. They've been inpatient, outpatient.

We had a robbery III case that was treated as a misdemeanor. That client went into an inpatient program based on that, and that was highly because of our

case manager. She was able to get this person into inpatient treatment, and that ended up resolving the case in just a misdemeanor.

In addition to that, we've had multiple...I mean it was just a few...measure 11 attempted murder cases that have been resolved with just probation and treatment court. And that's a big step considering the fact that these are people who are looking at prison cases and looking at multiple, multiple years in prison. And to go down to just probation...optional probation and treatment court is incredible. Next slide.

So, the unique thing about the trial division is that when we got our cases, we got the Betschart cases, but the custody status at our appointment, the majority of them are in custody. So, about 56% of them were in custody. There's 1% that's at the state hospital. And then out of custody, we've got about 43%. So, the majority of them are in custody, but there are quite a number that are out of custody as well. Next slide.

What the trial division has done is we're trying to take a multi-prong approach to addressing the unrepresented crises. We're doing that by implementing some fresh ideas such as an arraignment day. Typically in Jackson County we have...the consortiums and also the nonprofit public defense has taken all those arraignment days. We have taken on one arraignment day a week so that we can try and ease that pressure. That [Inaudible 02:52:37] in April 1st. And so we're only two weeks into it. But in that timeframe, we've been able to take a number of cases so that we're not waiting until the end of the month to take those cases. We're taking them at the front end as well. We've put together...

I've worked with the district attorney with putting together this early resolution program. We're working on putting together an early resolution docket so that a lot of those cases will be on one docket day so that we can get some of those unrepresented cases taken care of early rather than later. We're also working with the court administrator and also with the district attorney's office to put together a DUI diversion docket. That was something that had happened a while back that took a lot of those unrepresented cases off the list. We're going to start doing that as a trial division and getting that taken care of as well. We've also started looking into a probation violation only docket. So, some of those cases that are on the unrepresented list, there are quite a number that are just probation violations. And we've talked about making that into a separate docket and trying to get through those as well.

We've done a lot of community partner outreach. We've talked to people in the mental health community. We've talked to drug and alcohol treatment programs. We've talked to the veterans courts in Klamath County to try and see if we can get that implemented down here in Jackson County and also in

Douglas County. And we've worked a lot with the domestic violence partnerships out there to try and see if we can bridge that gap. Our case manager has done a great and excellent job of trying to make that outreach and trying to connect people who are in custody and out of custody that are clients of ours with those things that are not there as well.

The investigators, and the case managers, and the entire office as a whole have been doing so many things behind the background that we don't see just on the forefront. With our clients [Inaudible 02:54:36] family, we've created and executed release plans for those people when they get out of custody, when they [Inaudible 02:54:44] speaking with the clients' families to understand their backgrounds, what led up to the alleged criminal conduct in itself. Talking with clients and helping them get through different programs that they can see and hopefully resolve their cases.

And also [Inaudible 02:55:01] in the community after the case is resolved, we've connected clients with stable housing, restored their benefits, given them treatment options, and gotten them into treatments. We've obtained medical, drug treatment, and educational records for these people. Some of them don't have access to their records. And so we've been able to outreach and get that information from other states so that they can have that in their possession. We've connected clients with bus passes, and bus tokens, and other transportation so that once they're released they have a place to go and they're not just walking randomly down the road. They have an actual transportation option for them, which a lot of them haven't had before.

And the attorneys are working with the probation officers to obtain these mitigation factors, and negotiating that piece is important to get better sentencing outcomes for the client. Working with interpreters to perform immigration rights project intakes or having that as a catalyst as well to try and help people who don't speak the language to get them [Inaudible 02:56:07] information and the help that they need.

Peter Buckley: What's [Inaudible 02:56:13]

Alyssa Bartholomew: So, those are different kind of case work that they can do. They're programs that you can do online, and that can help a client... Say they have anger management issues. If they take those classes then they can get certifications, and then also can help with the mitigation.

Peter Buckley: Okay.

Alyssa Bartholomew: Next slide. So, all in all, the trial division has done a phenomenal job of trying to get the unrepresented list down. Again, the fact that we have done such a huge

amount of difference in such a short amount of time. Jackson County used to be number one in the state for unrepresented. Now, as of I think today, we're down to number three. I attribute that to the hard work that all of our attorneys, the investigators, the case managers, the legal assistants have done in this short period of time.

Jennifer Nash: I'm going to read a text message I just got from Commissioner Reinhard. I'm going to put him on the spot. [Inaudible 02:57:21] We need to get Alyssa in front of the legislature whenever possible. She gives a great presentation, and she'd be very helpful for our outreach. Good call on getting her on the agenda today."

[Laughter]

Alyssa Bartholomew: Thank you.

Jennifer Nash: So, I think that's absolutely true, and thank you so much. I was thinking exactly what Commissioner Reinhard texted me while you were... Like, "Wow, this is great." And I'm looking at my watch. Spot on time wise, too, so thank you. You're a very good trial lawyer obviously. Thank you.

[Laughter]

Alyssa Bartholomew: Thank you.

Jennifer Nash: Thank you very much for your presentation.

Alyssa Bartholomew: Thank you very much.

Jennifer Nash: All right. Next, we will move on to Presiding Judge Bloom from Jackson County. If he is here.

[Inaudible 02:58:10]

Peter Buckley: [Inaudible 02:58:13]

Jessica Kampfe: We could take folks out of order. We do have a number of four local defense bar here to present to the commission.

Jennifer Nash: We do. Let's give 30 seconds to see... I'd hate to start and then interrupt if it's going to be just a second. [Inaudible 02:58:31]

[Pause]

Jennifer Nash: [Inaudible 02:58:58] stuck in court. So, we can start with our local providers. And per usual, if the judge interrupts, we're just going to have to stop. How many times have we heard that? [Laughs] Oh. All right. So, let's start with the whole panel. Go ahead and come on up. And...

Jessica Kampfe: We can have them sit over here.

Jennifer Nash: That sounds great.

Jessica Kampfe: I think that would be best for the [Inaudible 02:59:23] to be able to pick up everybody.

Jennifer Nash: All right. Why don't we start with you introducing yourselves and [Inaudible 02:59:42]

John Hamilton: I'm John Hamilton. I am the administrator for the Jackson [Inaudible 02:59:49] consortia.

Clint Oborn: I'm Clint Oborn. I'm the administrator and executive director of SOPD.

Don Scales: I'm Don Scales, the administrator of Los Abogados.

Janine Hollingsworth: Janine Hollingsworth, [Inaudible 03:00:02] Los Abogados.

Jennifer Nash: Thank you.

Janine Hollingsworth: So, we're just going to kind of [Inaudible 03:00:11] a little bit, I think. We do the... We were asked to kind of address how we assign cases in our county. So, we are assigned a certain arraignment day for our groups. And then on that day, we take those cases. But mostly that ends up being [Inaudible 03:00:38] cases that we're assigning for the majority of the time until our attorneys fill up on their FTE or however you want to say that. And then if one of the other groups isn't able to take a case due to a conflict or whatever then we will assign that case. We kind of base a lot of this on attorneys and knowing their personalities, and knowing if they're out of town. We kind of can adjust their [Inaudible 03:01:14] based on that. It kind of eliminates the need to reassign the cases within our counties because we know, "Okay, this attorney is gone. This attorney has a huge trial going on. We can't assign [Inaudible 03:01:29] at that time." So, that kind of helps. We pull the remaining cases off of the unrepresented list. And once our attorneys are full, [Inaudible 03:01:43]

Clint Oborn: Yeah, so basically up until this month, SOPD, we took three of the five arraignment days. So, we took Mondays, Tuesdays, and Fridays. And then in March or so, we got an email from the court saying trial division would be taking

Tuesdays, so they're now taking those Tuesdays and apparently [Inaudible 03:02:05] cases. We appoint some of those cases basically as we go but usually by the end of the month capacity is built. One of the real big issues we have around here is jail access. And so we have attorneys that have anywhere from six to ten clients in jail at a time with 60-day timelines or sometimes 14-day timelines on probation violations. And access is severely hampered. That was brought up at our last...

Alton Harvey Jr.: What is...?

Jennifer Nash: Yeah?

Alton Harvey Jr.: What do you mean by...?

Clint Oborn: Accessing that?

Alton Harvey Jr.: ...hampering that? What do you mean?

Clint Oborn: So, we are given basically... So, historically there used to be three booths in our local jail to sit [Inaudible 03:02:49] like in person...

Alton Harvey Jr.: Yeah, yeah, yeah.

[Crosstalk 03:02:50]

Clint Oborn: Then we expanded it to seven. However, as part of the expansion, some good things that are happening also have impacts on our ability to see clients. So, they are now... Treatment providers are able to get into the jail, which historically hasn't really happened a lot. So, that's an improvement. But they're also being sent at the same times as all of us are going to visit our clients in jail. There's also the court system that is then evaluating them, whether they're eligible for court appointed attorneys. So, they're taking up booths.

Male: Jail medical..

Clint Oborn: Jail medical, yeah. Things that...

[Crosstalk 03:03:21]

Alton Harvey Jr.: So, the attorneys don't have priority in visiting?

Clint Oborn: No. We specifically brought up on Thursday in a meeting we had with the court, and we were told we would get an answer in the future.

Alton Harvey Jr.: But so who says that? The jail says that?

Clint Oborn: Mm-hmm. And the biggest push locally is always, "Well, if we have a bigger jail then this will be resolved."

[Laughter]

Clint Oborn: But it's always [Inaudible 03:03:48] at least from that end of things. And I appreciate the laughter, Commissioner. [Laughs] But yeah, that's kind of the response there. So, there is definitely significant issues that way. Additionally when you have six to ten in custody clients with 60 days [Inaudible 03:04:08] we also have new district attorney policies locally that are affecting that in regards to you set criminal cases, you set things for trial that basically all offers would go away, and so it has to proceed to trial. When you're looking at basically you have 30 days to make a decision on something, you're hoping that a district attorney will respond to you and kind of arms length negotiate with you, it makes things a lot more difficult. And then, like I said, in combination with jail access. So, we ended up cutting off on the number of in custody folks we can take because of a number of issues. Basically ethical issues in regards to seeing them, actually being able to proceed on their case, taking care of the case in a constitutionally sound manner.

Alton Harvey Jr.: Thank you.

Clint Oborn: Yeah. So, basically we'll go in and [Inaudible 03:04:59] SOPD and Los Abogados, and also Rogue Valley Defenders, we historically have split up the arraignment days. And on those days, you have arraignments, and you take the cases. Since this back log of cases, we're only taking the in custody cases on those days, and the out of custody folks end up going on a list back log. And so they... And then usually towards...once in custody capacity is kind of filled up ethically for our attorneys, we end up filling up the remainder of our MAC, as we call it, with out of custody appointments. And so those end up holding. And usually we try not to do those all at once. We try and hold them off throughout the month. Because what will happen, inevitably someone will get a client that gets relodged and gets three new cases, and so then there's a whole bunch of MAC that gets eaten up by that and a new in custody person. And so we try and bury that every couple of...usually the last two to three weeks in the month [Inaudible 03:06:03] in custody towards the beginning of the month that way.

Because we end up... So, we've been taking three to five days, so maybe taking two of five might affect that differently. But also at least from my perspective, I've lost attorneys to the trial division. They have higher wages, lower caseloads, as I mentioned in public comment this morning. And those are factors that we have to deal with and trying to... New people coming in... As yawl passed the

policy this morning. New people come in and usually don't have the capacity to take the same amount as seasoned attorneys. Not only just brand new attorneys but even attorneys that have practiced in other jurisdiction. Each jurisdiction is different. In Oregon each jurisdiction is different [Inaudible 03:06:50] arraignment process.

So, I kind of went on tangentially there, but all those things come to fruition to make it so that our appointments...we limit ourselves to [Inaudible 03:07:03] in order to prevent people from getting basically stuck in a PCR position or a position where their client is not actually represented. We then, like I said, take people off the unrepresented list [Inaudible 03:07:21] order of how long they've been on the unrepresented list. Currently there is...the district attorneys created it...it's called EDP, the early disposition program. Normally in the EDP often enough the statute is specifically written that it can be the early disposition program is created by a legal or public safety coordinating council. This is not one of those though. This is just one that the DAs created.

If you... Generally in my reading of these early disposition programs in combination with [Inaudible 03:07:56] which is about appointment of counsel, it's intended in a system where you have substantive representation before arraignment. If you're going to be making a decision about whether to take an early disposition program, you usually have counsel. Under our current circumstances, that's not how it's set up. So, our last meeting I kind of threw Ms. Bartholomew under the bus and said I know they talked about saying they would be partners in this, so I think that's kind of happening. Because under our MAC model, we don't have the ability to do that unless we contract for something separately.

Which when attorneys are saying, "Hey, I have so many cases [Inaudible 03:08:31] it doesn't really work [Inaudible 03:08:33] cases. And so hopefully there will be some fixes in the works on that, but that's caused some issues recently as well with people who are unrepresented. And then just asking basically to settle their arraignment because this early disposition program is not set up for...at least in my opinion, it would favor those who have the means to hire an attorney to talk about whether or not [Inaudible 03:09:01] program as opposed to all of those indigent defendants, which are 90% of the populous that deals with these cases.

Susan Mandiberg: How long does the arraignment [Inaudible 03:09:12]

Jennifer Nash: Hold on. Hold on. I got a text message from one of the commissioners on video. Usually I see myself on camera. But usually when we're talking, they don't know who's talking. So, if we can identify ourselves and when we ask questions [Inaudible 03:09:24]

Susan Mandiberg: It's Susan Mandiberg asking. How long does the arraignment get [Inaudible 03:09:33]

Clint Oborn: So, it's a grant [Inaudible 03:09:34] 1st of April. And so I had arraignments yesterday morning, and I brought it up last week, saying it was going to be an issue. But [Inaudible 03:09:46] kind of in the middle of trying to create a response. So, I'm sorry, long way to answer your question. This time it was set to May 19th. So, it was set over a month. But the issue is we know that people on that...the people that are going to qualify for EDP generally... It's misdemeanor cases, and people are waiting four to six months for an attorney on those cases. So, this next arraignment appearance is going to be useless unless we somehow go, "All right, you take priority because you're going to lose this potential opportunity if you don't take advantage of it in this short timeframe." And that's part of the district attorney's policy in trying to...well, we're trying to reduce the back log, which theoretically under a workload model absolutely it would reduce this back log.

Because you... And if we did arraignments according to what the statute intends...because then we would have substantive representation at the first appearance at arraignment. I know our court system is intending to change that. Well, no, sorry, not intending, but they're going to discuss changing the appointment process. Historically in Jackson County, you're not appointed an attorney until you appear for arraignment. But they're talking about allowing...on the summons sending out that they can come in and apply for an attorney, and it will be granted. Where previously, you tried to go to the court and apply for an attorney before your first arraignment, and they would inform you that you couldn't get an attorney until you were arraigned.

Susan Mandiberg: Thank you.

Jennifer Nash: So, with that, I'm going to interrupt you for a moment. Well, a little bit more than a moment if you don't mind because I see that Presiding Judge Bloom has walked in, and...

[Crosstalk 03:11:22]

Benjamin Bloom: Hi. Thank you. Thank you.

Jennifer Nash: Hi. It's very nice to meet you.

[Crosstalk 03:11:24]

Benjamin Bloom: It's nice to meet you.

Jennifer Nash: Let's make sure you're showing up on video. You are. I can see you. All right.

Benjamin Bloom: I was in the middle of a trial, trying to leave on time, and it made me a few minutes late. And I apologize for that. No disrespect intended.

Jennifer Nash: None taken. Thank you.

Benjamin Bloom: I appreciate the work OPDC is doing, particularly in the trial division. Lately it's stepped up [Inaudible 03:11:54] started taking cases, which has been helpful. Because to give you a bit of perspective very quickly, when this crisis started, we had... Well, first of all, the approximate number of defense providers has stayed about the same, but our caseload has gone down 20% [Inaudible 03:12:13] And that's [Inaudible 03:12:18] I just looked at the numbers [Inaudible 03:12:20] March. [Inaudible 03:12:25] In 2017, they had 7,111 criminal cases. In 2018, they 7,303 cases. And that's misdemeanors and felonies. It began to drop in 2019 to 6,651. It continued to drop in 2020 to 6,402. 2021 is 5,240. 2022, 4,813. 2023, 4,386. 2024 it was back up to 5,000. Then now we're on pace for about those same numbers. About 5,000. So, from the peak in 2019, we're luckily 20% down.

My math skills are not great, so don't hold me to that. This year, our felony cases are continuing to go down. The misdemeanor cases are going up as a result of the DEM cases, the drug enforcement [Inaudible 03:13:30] But if you look at the historical way we had cases, we never had unrepresented cases until starting in April of 2023. Then it continued... And that's consistent with when the MAC happened. And so I think the attorneys in Jackson County work very, very hard. And I have fundamental problems with capping the ability of any professional to work on a case because they're the ones who should decide whether they're available to take cases. Then it becomes a compensation issue. And that's out of my... [Inaudible 03:14:19] parity compensation is important with the defense providers and prosecutors. And it's a relatively, I think, easy fix. Maybe I'm [Inaudible 03:14:35] but paying people for their work...you should pay public defenders consistently with what you pay deputy attorney generals.

And that's money well spent. And pay them on a case based model because it's the only way to... I know there are drawbacks to that system [Inaudible 03:14:57] and people just processing cases. I've been a judge for 14 years. I haven't seen that. Well, maybe... I take that back. Maybe there are concerns, and it's certainly important that you deal with those people accordingly [Inaudible 03:15:11] deal with them. But attorneys who want to work and treating everyone the same just isn't working. The problem is [Inaudible 03:15:20] because the average caseload is down for everyone. Because when the MAC didn't work and [Inaudible 03:15:28] April 2020... [Inaudible 03:15:30]

2023 when we saw that coming [Inaudible 03:15:36] continue every month, so we switched from a year long MAC to a monthly cap on cases. And so all of a sudden attorney's cases went down [Inaudible 03:15:46] about 50%. In our county, 2023, a public defender had an average caseload of 58, each individual attorney.

This is per attorney. In consortium, their average was at that time 46. And then you had hourly attorneys [Inaudible 03:16:10] and they were higher before. Consortia has always been very high. We were very lucky to have the consortia [Inaudible 03:16:18] But... And the public defenders. [Inaudible 03:16:21] But the case numbers have dropped. And unfortunately the trial division [Inaudible 03:16:29] 2023 [Inaudible 03:16:35] or sorry, 23 cases in July of 2023, 26 in November 2023. And that's gone up a little bit, and we've seen that. Because unrepresented cases, there were a thousand in November of 2021, and it's down to 600. So, we are seeing some progress. I just don't think it's sustainable. Because every month we're adding more unrepresented cases. So, [Inaudible 03:17:05] way to encourage people to take cases and get compensated for that. Because not all attorneys are the same. [Inaudible 03:17:17] works better than the alternative, saying, "This is all you can take."

And you'll see that. Because consortia attorneys sometimes take civil cases, public defense cases, and other family law cases. And all that work takes away from their ability to provide work on some cases, but they have to be the judges of those cases and what they can handle. And I think treating a brand new attorney like a seasoned attorney [Inaudible 03:18:02] There's no question in my mind [Inaudible 03:18:12] is to [Inaudible 03:18:19] make a payment model that encourages people to take cases if they're able to. I don't think there is an attorney... If anything [Inaudible 03:18:27] I don't think there's an attorney who's going to say, "I can't take any more cases." [Inaudible 03:18:34] take cases [Inaudible 03:18:42] adequate representation. I'm happy to [Inaudible 03:18:43] because I appreciate everyone's intent to try to resolve this issue and to give representation to the people.

Because right now, we have over 600 people [Inaudible 03:18:58] many of whom haven't had an attorney for a long time. [Inaudible 03:19:06] the whole time you're thinking about your case. I know as a judge, I think about my cases. I know attorneys think about their cases. I can't imagine being one of those people who don't have the legal [Inaudible 03:19:16] "What's going on? What's happening? [Inaudible 03:19:18] Can I make plans? I don't know what's going to happen. When is the court going to call me in [Inaudible 03:19:24] in jail." It's very frustrating. On the flip side, it's a community safety issue because people are not going to... [Inaudible 03:19:37] And so there are reasons [Inaudible 03:19:43] and we have a very good [Inaudible 03:19:49] great work. Could there be more [Inaudible 03:19:56] resolve it [Inaudible 03:20:06] And like I said, trial

division has really stepped up in the last few months. We've seen that. It's noticeable [Inaudible 03:20:19] our local attorneys have always stepped up. They've always been willing to [Inaudible 03:20:26] and I appreciate them. So, [Inaudible 03:20:27] Do you have any questions for me?

Jennifer Nash: I do. [Inaudible 03:20:33] go ahead first.

Alton Harvey Jr.: No, you go.

Jennifer Nash: No.

Alton Harvey Jr.: Okay.

[Laughter]

Alton Harvey Jr.: So, this is Commissioner Harvey. Thank you, Judge, for what you said. And I agree with a lot of it. My question... Other than Portland and Multnomah County... So, a quite bit larger county obviously with more resources... Not to presume anything, but I would think that one way to help with this issue with unrepresented is to offer more programs that the attorneys have direct access to. And I mean you weren't here for my earlier statement, but it sounded like from the executive director's perspective, there's so many entities fighting against what they're doing, specifically trying to see people that they're representing in the jail. So, I guess my question is is there any discussion between the judges, and the DA's office, and the public defender's office for resources, treatment, case management, mentors, things like that? Is that something that's a possibility?

Benjamin Bloom: I think we... We have a group that meets every quarter. It's a group of criminal judges, me, because I'm the presiding judge, and the defense providers, the sheriffs office, and community corrections, probation services. And I think that's a possibility. I think there are services. We have limited resources. But that's a possibility.

Alton Harvey Jr.: Do you see where that would help though?

Benjamin Bloom: I do. I do.

Alton Harvey Jr.: Okay.

Benjamin Bloom: I do. I think that would help. I think it would be low hanging fruit to some things. But I think it's very important to have these [Inaudible 03:22:57] and they can do that if people get on the same page. And that's between the DA, the defense attorney... And the court would certainly be willing to facilitate... And I think we

do with accepting deferred sentences, and conditional discharges, and whether there's an option for treatment. I presided over a community family court in juvenile for a while, and it was families with drug and alcohol problems [Inaudible 03:23:28] dependency system. And the people that we helped in that court, the families... They got wrap around services. It was very affective. It just wasn't sustainable for a couple reasons. There were housing [Inaudible 03:23:46] DHS [Inaudible 03:23:49] And [Inaudible 03:23:52] fewer and fewer people doing it. It just wasn't [Inaudible 03:23:58] So, that's a policy decision to make these options available. And we do [Inaudible 03:24:09] legislature and executive asked us to do [Inaudible 03:24:14] but in terms of making options available [Inaudible 03:24:19] And I would certainly be willing to look into that. And I believe our DA is, too. They have a... I mean they definitely do [Inaudible 03:24:32]

Alton Harvey Jr.: Thank you.

Jennifer Nash: I have one question and then just [Inaudible 03:24:35]

Benjamin Bloom: Sure.

Jennifer Nash: My question is we've heard some feedback that it's difficult for attorneys to see their clients who are in custody. And so... I practice in Benton County, Corvallis. And we have a pretty...historically had a pretty close relationship between the elected DA, the sheriff, the presiding judge, and the defense representative because we have a single provider there who would meet regularly to talk about these issues and work through some process issues. Do you have or are you willing to facilitate a discussion like that to help attorneys have more access to their clients who are in custody?

Benjamin Bloom: Sure. I think that's important. I just heard this [Inaudible 03:25:27] but I think that's important. The thing we can't do is as was suggested at that meeting... I won't throw the person under the bus who said the suggestion. [Inaudible 03:25:39]

Jennifer Nash: Sure.

Benjamin Bloom: [Inaudible 03:25:44]

Jennifer Nash: Sure. And I mean...

[Crosstalk 03:25:50]

Benjamin Bloom: [Inaudible 03:25:50] encouraging that. It's very important that people can meet with their clients.

Jennifer Nash: And then just generally about caseloads... I mean you are not wrong. The problem really came to light in 2023 with the unrepresented persons crises, and it really was... That's when it started. And it really was because the commission [Inaudible 03:26:15] cap, maximum attorney capacity. And the legislature helped facilitate that. And that really was because through various different studies, the commission learned and came to know that the requirements... Well, not the requirements. The options to take as many cases as one wanted to and to be paid by case was unconstitutional. And so that's how the Maximum Attorney Capacity, which is... Everyone agrees it's flawed.

[Crosstalk 03:26:50]

Jennifer Nash: Everyone agrees it's flawed. It doesn't capture the work. It's got all kinds of problems. But we as a commission have not heard from any public defender that they would take more cases if they were allowed to. What we've heard is that they're taking as many cases... I mean if they can take more cases, they do take more cases. There is an hourly program. Not for nonprofit public defenders but an hourly program that's available for contractors who can take cases above their contracted amount. There are hourly attorneys that can take cases at hourly. We have not had any nonprofit public defenders or state trial division come in and say, "Oh, just let us take as many cases as we want to. We're being limited. We wish we could do more." And I think... And I understand we're in a huge crises. The commission understands we're in a huge crises. And I'm not sure that requiring lawyers to take more cases is the way out of it. That's what got us into this, ultimately.

Benjamin Bloom: I'm not saying requiring to do it but compensating them on a case based model and recognizing your concerns [Inaudible 03:28:04] potential risk it puts on attorneys who decide to take a case or [Inaudible 03:28:13] the ethical risk in the situation. I think that exists in any representation [Inaudible 03:28:19] case model.

Jennifer Nash: Sure.

Benjamin Bloom: Just like any profession. But I think attorneys have ethical obligations [Inaudible 03:28:31] attorneys who appear in my court are giving that. And I've known many of them a long time. We have [Inaudible 03:28:39] fairly consistent for a long time. And I think if they were paid to represent people... I mean they had higher caseloads before when the MAC wasn't in place. They can't do cases [Inaudible 03:29:00] Douglas County [Inaudible 03:29:04] county. [Inaudible 03:29:06] But the situation in our county [Inaudible 03:29:09] counties, our attorneys are working really hard and do it and they will continue to do it if they were compensated for that [Inaudible 03:29:22] in a timely manner and

appropriately. And the decision of the MAC is unfortunate. Again, I recognize the reasons why it was put in place [Inaudible 03:29:35] But it's a choice between 600 people [Inaudible 03:29:44] unrepresented to provide them with representation. And when this happened at the start in June...yes, in July of 2023, we needed about three more attorneys. And then I think it was three and a half because that was under the MAC calculations [Inaudible 03:30:09] Then it grew. And so the issue is how do we [Inaudible 03:30:16]

Jennifer Nash: Money.

[Laughter]

Benjamin Bloom: Yeah.

[Crosstalk 03:30:23]

Benjamin Bloom: Pardon me?

Peter Buckley: We need to have more attorneys.

Jennifer Nash: Yeah, we need to recruit and retain. And the way you recruit and retain is adequate compensation and appropriate caseloads.

Benjamin Bloom: [Inaudible 03:30:34]

Susan Mandiberg: And the ball is in the legislature's court.

Alton Harvey Jr.: That's the issue.

John Hamilton: No, it's not in the legislature's court entirely. You guys passed policies this morning that are completely tone deaf to the reality of the work. [Inaudible 03:30:50] gets passed in a way that tries to get more out of the contract attorneys where the compensation issue remains exactly...

[Crosstalk 03:30:59]

Susan Mandiberg: Let me respond. This is Mandiberg. The policy changes that were proposed and approved were in direct response to the budgetary limits being placed on the commission by the legislature. And let me speak for myself and probably for other people. I would love to pay public defenders on parity with district attorneys.

Jennifer Nash: DOJ.

Susan Mandiberg: Or DOJ for that matter. And we cannot pay what the legislature doesn't provide us to use to pay. So, I think we're all aware that there's a problem. I think we're all aware that we need more lawyers. I think we're all aware that we need better policies. But we're constrained by what the legislature makes available to us.

Benjamin Bloom: That's true.

Susan Mandiberg: So, it's great to make the arguments to us. I'm hoping that people are making the same arguments to their legislative representatives.

[Crosstalk 03:32:13]

Susan Mandiberg: Because that's where the power lies to make necessary corrections.

Peter Buckley: And if I can just add on... Peter Buckley. We [Inaudible 03:32:26] as far I was concerned.

Susan Mandiberg: Absolutely.

Peter Buckley: Because until we can show the legislature...because [Inaudible 03:32:34] public defense that we're squeezing every dollar out of the MAC system we can't even get to the conversation about compensation.

Jennifer Nash: We have very few friends in the legislature.

Susan Mandiberg: And I will also add that it's the legislature that is requiring us to continue the MAC system even though the commission would rather not continue to use that system. So, again...

Jennifer Nash: And the statute, by the way, direct us not to continue it and yet the budget is being funded under the MAC system.

Susan Mandiberg: Yeah, so we're limited in how much we can do when we all agree on what the problems are and many of the solutions.

Benjamin Bloom: And I'd just comment... And first of all, Ms. Mandiberg, did you teach at Lewis and Clark?

[Laughter]

Susan Mandiberg: Up until three years ago.

Benjamin Bloom: I went there [Inaudible 03:33:33] I didn't know you [Inaudible 03:33:35] That's not true. I had criminal procedure and [Inaudible 03:33:43] nice to see you. My concern again is primarily with the people who are unrepresented and how do we find a way to get [Inaudible 03:34:03] to think in the short term and the long term. That was my concern with the MAC. It's obvious I don't care for it, but second of all, when it was implemented, [Inaudible 03:34:15] changed the whole system [Inaudible 03:34:18] don't have a [Inaudible 03:34:26] the answer is we need more attorneys, but we don't have them. We're doing the existing work with, again, almost the same amount of attorneys that we had when our caseload was 20% higher. And compensation has clearly changed or should change between 2017, '18, and now. [Inaudible 03:34:50] if they can take more cases. [Inaudible 03:34:59] few more.

Alton Harvey Jr.: As a commissioner who's had their experience having been represented by public defense... And I think back, and I always, always thought they deserved more money. I always thought that. When I was in the system, it wasn't nearly as [Inaudible 03:35:24] as it is right now. There was not nearly an issue of unrepresented people as there is now. But I always thought attorneys deserved more money. Especially the good ones. I mean I've had some [Inaudible 03:35:40]

Benjamin Bloom: Did you say judges deserve more money?

[Laughter]

[Crosstalk 03:35:47]

Alton Harvey Jr.: But I mean I've had some bad public defenders. I mean seriously. But I've had some really good ones. And I've always thought they deserved more money. And I spoke with one of them [Inaudible 03:36:01] and he said to me, "You can't get blood from a turnip." And when I asked him that, I asked him what did he mean by that, he says, "It's all political. It has to come from the top." And so being on this commission for as long as I've been on this commission, I don't know anything about the law. I'm not an attorney. I do know right from wrong. And I know that... And I'm not... This has nothing to do with your statement, but I do know what being the scapegoat is and having a finger pointed at you all the time. And this commission... I believe the department is working as hard as we possibly can to get you guys what you need. But the powers that be... I mean for lack of a better term, smoke and mirrors. They know what it is, too. They know what we need, and they're... So, anyway. Get emotional [Inaudible 03:37:08]

[Laughter]

Benjamin Bloom: I get emotional about this, too. It's changed my role as a judge [Inaudible 03:37:16] find people to... "How do we get people to represent us? [Inaudible 03:37:20] spinning around and deciding who we'll appoint [Inaudible 03:37:28] creating additional workers to see who's got availability to calculate who's doing what. When all I want to see is that people are represented [Inaudible 03:37:40] cases resolved. And the three individuals [Inaudible 03:37:45] three attorneys sitting there, I know all of them. I knew Mr. Hamilton when he started. [Inaudible 03:37:56] I knew John [Inaudible 03:38:11] and I saw great work from those individuals and from other attorneys [Inaudible 03:38:13] It's a hard job. I always... I like lists. [Inaudible 03:38:20] best sandwich places, best [Inaudible 03:38:25]

[Laughter]

Benjamin Bloom: Most important players in the [Inaudible 03:38:31] the hardest jobs. Number one for me was a police officer. That's just a hard job. Because every time you open the door, you don't know if you're [Inaudible 03:38:41] when you go to stop a car, you don't know what's going to happen. [Inaudible 03:38:46] And they do a great job.

Jennifer Nash: Commissioner Harris, go ahead.

Rob Harris: Thank you. I think this is a great conversation. We've had several presentations by presiding judges over the last numerous months, and it's always great to hear from every one of them. And I think that probably because we adopted these policies early today this discussion...this has been a discussion as much as a presentation. I think that the position of the local providers is really... I take it to heart. They don't love the fact that we essentially increased MAC...their utilization from these policies, but we have to be keenly aware of the unrepresented crises [Inaudible 03:39:48] tax dollars, proper application in the correct counties, and making sure that at least the modifications and the policy changes we make to the MAC are consistent with work performed and the caseloads, and those are hard decisions.

As Vice Chair Mandiberg said, it would be preferable to reduce the MAC for everybody, but the circumstances are not such that we can do that. And I think that the conversation between the commissioners today, and the local providers, and the judge sort of explain our uncomfortable position of making some of these decisions as a good faith down payment towards future reforms and future betterment of the system. I think that I would love to hear presiding judges... And I'm not hearing on you, Judge Bloom, but I would love to hear presiding judges come in here and explain what the courts are doing. And I would love to have heard Mr. Neely this morning explain what the DA's and the

retired DAs are doing that are so interested in fixing this system. Because the defense attorneys are the last powerful people in this system.

We have the least amount of... We can't charge cases. We can't dismiss cases. We can't create treatment courts, or diversion programs, or early disposition. We're largely...defense lawyers are largely at the service of the system as it's presented by the legislatures, the courts, and the DAs. And yet fixing this problem all falls on us, according to some people. Not Judge Bloom. I'm not saying that. But to some people, it all seems to fall squarely on us, the defense providers, to fix. So, we're doing the best...this commission is doing the best we can. We take everything... I think everyone comes and talks here in good faith, but I think we all look at it from our own silos, our own positions and our job responsibilities, and that's totally understandable. But until we look at this systemically both on the legislature, the courts, the chief justice, the local presiding judges, the DAs, law enforcement.

These all create issues. In my county, Washington County, if they either open a pod or close a pod at the jail, or they decrease visiting hours, or they don't let us call in, that all increases our caseload, our ability to service our cases and the amount of time it takes for each case. We have tons of body cams in this county. That takes a lot of extra time. So, five years ago, seven years ago, we didn't have as many body cams. Lawyers didn't have to look at this. That decreases the number of cases you can take. So, even if filings go down, the work is still there because each work per case goes up. But when we look at it in a silo and we only look at the data we have or we're responsible for, we may not understand that, or we may not take that into account, or we may not see how it affects the entire system downstream from these decisions.

And, again, defense attorneys are way downstream. So, these are great conversations to have. And I would just urge everyone to understand, we are in a crises because there are no easy solutions. We made some of these policy changes because we do have to make some realistic compromises given the politics and the budgets, the capabilities, the number of people we have wanting to do these jobs, the number of people leaving these jobs, the salaries that we're able to pay. I guess I just wanted to make a comment. This is a great conversation. I think it all sort of comes together because these policy changes, and I hope people continue to have these conversations. I'm going to be here to hopefully offer some advice or some ways out of this. It's a long process. It's not going to be solved this contract period, or next contract period, or the next contract period after that most likely. But anyway, that's my observation. That's all I wanted to say today. Thanks.

Jennifer Nash:

Thank you, Commissioner Harris.

- Peter Buckley: We heard from the Lane County presiding judge a couple months ago, and they talked about how they were able to do some scheduling changes within their system to actually take kind of the burden a little bit off of public defenders. Things like a certain schedule for the process to go through, being able to put a deadline on a case that needs settled, etc.
- Susan Mandiberg: Mandatory settlement conferences.
- Peter Buckley: Mandatory settlement... So, have you looked into basically how the schedule impacts public defenders and changes that might be able to be made?
- Benjamin Bloom: I think we've looked at the system. We've changed our systems to be more like other dockets. So, [Inaudible 03:44:37] more streamlined in getting cases to trial. Which did include the settlement process. But two years ago, we had mandatory settlement conferences. And our criminal judges... We set up our court... We have judges who do primarily or almost exclusively criminal cases and judges, who do civil and family law, and judges who do juvenile. And previously, the civil judges, so not to conflict any criminal judges, would heard and do criminal settlements. We had mandatory settlement conferences set up in those cases. The providers told us they didn't want to do that [Inaudible 03:45:16] They wanted to contact us [Inaudible 03:45:19] So, we're more than willing to institute some [Inaudible 03:45:26] a lot of settlement conferences [Inaudible 03:45:35] myself and other civil judges, I know we all do that. [Inaudible 03:45:41] So, we don't have to set it in stone right now. I think [Inaudible 03:45:47] civil attorney and counties had mandatory settlement conferences [Inaudible 03:45:52] I think there are some advantages to putting it out there, because it makes people work towards that. But what I saw when it was mandatory is a lot of times we'd [Inaudible 03:46:04] it's easier if people contact us and say, "Hey, we want to try to settle." [Inaudible 03:46:13]
- Jennifer Nash: Well, I'll push back slightly.
- Benjamin Bloom: Sure.
- Jennifer Nash: I don't do very many criminal cases anymore just because of my service on the commission. I do mostly civil work now. But it's evolved almost in every case into a mandatory settlement conference just because I do domestic relations. We don't want to go to trial. So, we'd rather do a settlement conference and help our clients along. One of the requirements for our court is that we have to provide the court at least 48 hours in advance of a maximum four-page summary of our case, including the facts of the case. It's confidential. It's in front of the judge. The other side doesn't read it.
- Benjamin Bloom: Sure.

Jennifer Nash: We have the strengths and weaknesses of our case, the particular problems we see, are we having discovery issues, whatever. The benefit to that is it makes me and everyone else do work on the case ahead of time. So, if you set a settlement conference far enough ahead of a trial setting [Inaudible 03:47:13] before trial setting, my experience in criminal cases is it's the DA's office that doesn't open their file. They're just as overworked as we are. They don't review the discovery. If there's a mandatory settlement conference, they're going to have to do that because they're going to have to provide that before a case [Inaudible 03:47:28] trial. And so it may... Even if you have a... "Well, people don't want it." If you make it mandatory, it doesn't matter if they want it.

Benjamin Bloom: Well, sure.

Jennifer Nash: You get to decide that.

[Crosstalk 03:47:36]

Jennifer Nash: And then they have to open their file. And what we've heard...and one of the reforms that has been pushed by the defense bar that has not been successful is to set those kinds of deadlines because many, many cases get dismissed on the eve of trial because the state isn't ready to proceed because they just opened their file and realized they can't...

[Crosstalk 03:48:01]

Jennifer Nash: ...prosecute this case. So, if you have those settlement conferences, and you can call them whatever you want to if they're not settlement conferences... But where people are required to do that kind of work, maybe some of those cases get moved out of the system faster.

Benjamin Bloom: Right. I agree. I agree.

Jennifer Nash: Just a thought.

Benjamin Bloom: I agree. I'll go represent it right now, and I think that's a great idea. And I'm more than happy...

[Crosstalk 03:48:25]

Benjamin Bloom: More than happy. I've done settlement conferences [Inaudible 03:48:32] more than happy to do it. And making it mandatory has some advantages, like you said. [Inaudible 03:48:43]

[Laughter]

Jennifer Nash: Well, sometimes you do it to make your client listen to the judge.

Benjamin Bloom: I know. I know. I get it. I get it. But I think [Inaudible 03:48:53] my experience has been if I try to settle a [Inaudible 03:49:00] case... And I do [Inaudible 03:49:02] case twice.

Jennifer Nash: Also true.

[Crosstalk 03:49:08]

Jennifer Nash: Well, thank you. Thank you very much for coming.

[Crosstalk 03:49:12]

Jennifer Nash: Thank you for the open discussion. We really appreciate it.

Benjamin Bloom: I appreciate it. I appreciate your all efforts trying to deal with the problem. It is a big problem, and it's an important problem. It's fundamental. It's what makes our country great [Inaudible 03:49:29] We need to have that process.

Jennifer Nash: [Inaudible 03:49:39]

[Laughter]

Jennifer Nash: Thank you.

Benjamin Bloom: Thank you.

Peter Buckley: Thanks.

Alton Harvey Jr.: Thanks, Judge Bloom.

Susan Mandiberg: Thank you.

Jennifer Nash: You guys, we're running a little behind, but important discussions. And so please continue.

Clint Oborn: We were kind of given four prompts essentially, which I'm sure you all are aware of. I can kind of jump side to side on those a little bit. However, there were a few things said that I just want to clarify. I know it was said that historically we had like 58 cases. I'm not sure that is... Currently I can tell you my attorneys have a rolling caseload of 48...

[Crosstalk 03:50:22]

Jennifer Nash: We have data from OJD.

[Crosstalk 03:50:25]

Clint Oborn: I just wanted to clarify that. So, basically I think we kind of went over the appointment process. Mostly I think you're wondering about programs and processes and how we can help move this along. From my perspective at SOPD, we do the majority of hiring in the area, bringing people in to the area. There's been a little bit of changes, but it's about 83% of local criminal defense practitioners have spent time at SOPD. That's how they got where they are, doing what they're doing now. So, we're the ones who bring people in, get them going in the system. I see John nodding his head next to me. That's where he had worked when he... I mean he worked in the court system prior, and he [Inaudible 03:51:12] and that's where they get their start to get a handle and training on how things actually work. So, [Inaudible 03:51:20] hiring new attorneys. In the last 18 months, I've had attrition absolutely.

That attrition, though, has primarily been to other providers in the area. So, they have gone on to represent more cases. And sometimes I think that those hires on, the way it's calculated, is a little difficult because I think sometimes it shows there might be hires in other areas when we're just backfilling the position but really we're the ones filling those positions. So, in the last 18 months, we've hired five attorneys. I have two more I'm trying to hire for [Inaudible 03:52:01] class that will be graduating [Inaudible 03:52:03] And I expect more attrition along the way, particularly if OPDC has enough money for more positions because they will [Inaudible 03:52:12] my office, so that's how it works. That's the reality of what I've been told. So, that's just where things are. So, there is that kind of two-tiered system of payment at least when it comes to specifically public defense providers as in 100% fully public defense providers as opposed to a system of consortia where you can also take a...of course you can take your .9 or .95 or whatever and take a portion of retainer work as well.

So, basically hiring people on is how... I mean the program and process... I think I don't have time other than training people...I don't have the time to participate in these programs and processes because usually I think it kind of comes down on my shoulders [Inaudible 03:53:00] pretty overloaded with cases. It's not usually something I can tell a brand new hire-on, "All right, we're going to do this meet and greet diversion extravaganza," or whatever it might be. We're usually equipped for those kinds of things. And I think we've already discussed this, but most... I mean I think one of the prompts was... I have them pulled up on my phone here. I'm trying to make sure it's correct. I think one of the

prompts was what are improvements or suggestions for improvements. I think something that's been touched on and I think yawl have heard me saying things over in a public comment was submitted particularly from PDO...

I'd ask you to read that again, despite the policies already being passed. I understand how you're stuck between a rock and a hard place. But ultimately, what attorneys hear on that often enough, at least within my office, is it's diminishing their value. I think we've taken some great steps forward in the last few years in saying no, public defense is valuable. And I think there was this moment in time a few years ago where everyone kind of believed, "Oh, once there's this backlog, there's going to be an outcry like, 'Oh my gosh, I can't imagine this would ever happen in our system, in our state, in our nation.'" Clearly that hasn't been the outcry that we thought it might be.

And I think because of that, there are some reactionary steps that were taken like this partial weighting, different compliance policies [Inaudible 03:54:30] might be. And so because of those, because of the nature of those things, and the position you're put in, the message that a lot of attorneys get under the contract regimen is that their value is diminished. And I think you all recognize that. I'm not trying to say you're trying to point that finger. You're stuck in a hard place on how you approve, how you do what the legislature wants you to do. But ultimately I think sometimes... Public defenders, we're always the ones standing up for people. That's what we do. And we're used to being at the bottom of the pile. That's just how it works. As Commissioner Harris stated, we don't have the power. We know we don't. But policies like this make us feel even less powerful and make us feel like we are not appreciate.

Susan Mandiberg: Can I ask a question? This is Susan Mandiberg.

Clint Oborn: Yeah.

Susan Mandiberg: Given that you understand that we're between a rock and a hard place, as you put it, is there anything that we can do that's in our power...? I mean I was a public defender. I understand how it works. Is there anything that we can do that's within our power to do that would make people in your offices understand how much we value them? Is there anything that we can do that we have the power to do that would have some beneficial psychological effect? Because I think if there is, we'd be happy to do it. It's just a question of being able to do it within the political and legal constraints that we're operating under.

Clint Oborn: John wants to [Inaudible 03:56:08]

John Hamilton: [Inaudible 03:56:10] some measurement besides cases. Right?

[Crosstalk 03:56:17]

John Hamilton: So, this whole thing started with the sixth amendment study about crappy work being done or unconstitutional work being done by attorneys who were gobbling up every dollar they possibly could. That wasn't true of every attorney. The minority of attorneys that were put in that position were taking more cases than they should have. The only measure that matters and the policies that were passed today demonstrate that is am I swallowing the entire fire hose. Is ever case being shoved down my throat you possibly can? The measure that started this was the quality of the work and the quality of the representation. Where's that measure in any of this discussion? We have attorneys doing fantastic work, and no one said, "Oh, Clint hasn't had a single PCR filing filed against him in ten years." Or, "None of them got traction." Or, "His clients are grateful." So, none of those...

[Crosstalk 03:57:13]

Susan Mandiberg: Given the size of the system and how many different entities are providing the presentation, and given the size of the staff in the agency, can you give us some suggestions of how we would be able to even be aware of let alone compliment the kinds of measures that you're suggesting? Which I agree with you are absolutely wonderful measures. Absolutely great measures. But of course the commission itself has one staff person. The agency has a limited staff. Again, because of the resources made available to it. So, for example, if the... I'm going to use the word burden. Were put on providers every month or every quarter to say, "Report to the commission, 'These are some really amazing, positive things that have gone on in our agency, or in our consortium, or in our firm. These are some successes we've had...'" I don't even know how to know that those successes are going on. It's not reported to me. And right now as I understand it, the agency doesn't have the mechanisms for keeping track of that on a regular basis. So, if you all were able to report to us successes and wonderful things that are going on, we might have some material to work with to further one of our goals of not only making public defenders feel valued but being able to publicize more to the world at large why public defenders are valued. Right?

John Hamilton: I would recommend partnering with academia and the universities.

Susan Mandiberg: Can I start telling you [Inaudible 03:59:42]

[Crosstalk 03:59:45]

[Laughter]

John Hamilton: I have worked successfully with academia. The family court program that Judge Bloom was describing was validated and [Inaudible 03:59:54] State University.

Jennifer Nash: So, here's the... You're right, this is like... We've gone completely sideways.

[Crosstalk 04:00:03]

John Hamilton: I've got my script. I can stick to a script.

Jennifer Nash: No, this is... So, I want you to know this job...this volunteer job has been the single most difficult thing that I've done in my entire professional career and also very rewarding. But it is out of my wheelhouse in so many areas, and the biggest one is walking into the legislature... I almost went off. Walking into the legislature and having to field questions from people who are not lawyers and are not familiar with public defense who ask the same question over and over again, and I'm going to tell you what that question is. "I don't understand what you have done with the 100 million dollar investment that we've made in public defense over the last two years. Why haven't you solved the unrepresented problem?" If I had a dollar for every time I've heard that... And there is... We have answers. We give them answers. And none of them...

Male: MAC.

Jennifer Nash: ...are satisfied.

Male: It's because of MAC.

Jennifer Nash: And I understand why. Well, I've spent many hours thinking about this, and I understand why. Because we're playing inside baseball. We understand... I walked into this... You may have heard me say this before. I walked into this thinking two and a half years ago, "Oh, this is easy. If you just give us enough money we'll fix the problem." This is not just a money problem. Would help, but it is not just a money problem. And to try to explain the complexity of that to someone in a one-pager is impossible. And it is... If we figured out a way to do that, it would go a really long way. And the pressure... I'll tell you three things that are really, really important that need to happen like right away. You're talking about quality. Guess what's in front of the legislature right now? A bill that changes the standards from adopting the national or regional best practices to constitutionally mandated.

And a statement from the chair of that committee that he's not trying to change the standards, it's really just to try to bring thing sin line to where he thinks they need to be. Okay, I'll take him at his word. But I think that that...although that's what his intent is, that's not what everyone who's going to read that bill will

think. In that same bill, going to strip the commission of its independence and a meeting like this where the governor is unhappy because we're subordinate to the governor...[Inaudible 04:02:46] governor but a governor who doesn't like what we're saying, we can all be terminated the same way the chief justice [Inaudible 04:02:53] last commission the governor could dissolve this commission as well as any commission going forward. Could terminate the executive director for cause, and we all know what "for cause" means.

It means anything. And will strip our independence. Will require consortia to do a whole bunch of things that someone came up with that we're not really sure but could be done by rule making with the agency. But, again, it's going to be...at least if the current bill passes, it will be in statutory form. And... [Distortion 04:03:31] a recessionary budget because of the current administration's policies. So, we're being asked to look at cuts. So, what does that mean? We're going to have a bigger unrepresented problem. And the more we talk about that and the more we talk to the legislature about the realities of the situation, the better off we're going to be. And the better off is not good. It's bad. And it is the worst of just trying to make the best of the situation that has no good in it. And I know we're... I mean I've been a practicing attorney for a very long time. I was a consortia administrator for 17 years. I know...

I wholeheartedly believe in public defense. So does everyone on this commission. And I understand your frustrations. And we believe them, and we believe that you should be paid more and have lower caseloads, and be able to work as long as you want to work because nobody here does the work because you know you're going to become a lucrative rich person doing this work. We're all doing this work because we're committed to the work. And we need your help. There's only so much we can do, and we need you to... [Inaudible 04:04:58] but it's true. You need to develop and cultivate a relationship with your legislators and take them out to coffee, explain all of this to them, tell them why it matters. And I have learned over the two and a half years that matters. Those relationships with legislators matter.

The last person to leave the room really does matter. If they're hearing...good and bad, believe me. Because there's some people who are chirping in legislators' ears that it's like, "Where did that come from?" And it goes and takes off. So, we need to be the loudest voice in the room and the most common voice in the room. And you can help us help you by doing that so that we can have all of the help from everyone, understanding that also the legislators have nothing but bad choices, too, because they have a limited budget, and they have very serious problems that they need to solve. [Inaudible 04:06:01] sorry, but I think it's important that we all... And we all need to be on the same page, too.

[Crosstalk 04:06:09]

Jennifer Nash: ...all fighting... Well, we're fighting in a scarcity... It's a scarcity mentality. We're all fighting over [Inaudible 04:06:15]

Susan Mandiberg: The other part of it is that people are focusing on the [Inaudible 04:06:20] which is public defenders.

Jennifer Nash: Yeah.

Susan Mandiberg: And nobody is taking the responsibility as far as I can tell to deal with the contributions on the demand side. District attorneys, courts that don't regulate their dockets sufficiently, sheriffs departments.

Alton Harvey Jr.: Sheriffs departments.

Jennifer Nash: ...that don't allow attorneys to see their clients.

[Crosstalk 04:06:40]

Susan Mandiberg: And so as Commissioner Harris mentioned before, until people start taking a systemic approach to this, we're going to continue to be hitting our heads against some brick wall on some problem that we are not able to solve. And I think that message has to be communicated to the people who have power to do something about a systemic solution, which, again, is the political branches of this government.

Jennifer Nash: I was very [Inaudible 04:07:17] to hear Mr. Neely start reading that article on that study, and I was thinking I was going to reach out to him after this meeting to talk about that. Because it talked about the demand side and how important that was. And so maybe there is some room there for a discussion about having district attorneys get on board to try to deal with some of those issues, too. If it can happen, that would be great.

Clint Oborn: Just to follow up. I think with your question, Commissioner...

[Crosstalk 04:07:51]

Jennifer Nash: Yes.

Clint Oborn: Sorry.

Jennifer Nash: No, sorry.

Clint Oborn: [Laughs] So, at least from SOPD's position... And it's unique, like I said, maybe to a number of things. But in regards to the things that could be helpful... I mean I think you know being in academia with students, I think the mentality and mindset has changed a lot, at least even from the time I went to law school to be more around... There is a lot of push about the constitutional concerns of when you're representing public defense. And I've seen that just in people I've interviewed for jobs. And I really appreciate it. I think that's fantastic. And so part of why I'm saying that... So, I think these little messages... And I said understand the rock and the hard place.

But I'm saying these little messages [Inaudible 04:08:39] have to come back and be like, "No, no, no, we really will support you even though..." I know your statement... Like things are being said that like, "Oh, it's diminishing your value or whatever, and you're basically a MAC number." No, that's not where we stand. We actually appreciate you as a person. I think trying to create some sort of other structure saying, "Oh, these are the great things that have happened in public defense..." I think that's more of platitude. I don't think it has as much value. I mean I think... I'll go back to a few years ago when we got public defense day and got a letter or something that said, "Thank you for being a public defender."

[Laughter]

Clint Oborn: I don't know how many jokes I heard that day. So, that's what I'm saying. I don't think anything along those lines or even [Inaudible 04:09:24] is going to be the thing that's appreciated. It's more having someone to know that... That's what's great about SOPD or whatever. People know they have one another's backs. Yeah, everyone else might be out to get you, but you know that you can trust the person... I mean it's a little exaggerated but the person in the trenches next to you. You can trust them. You know, "Hey, I know I can trust them to look out for me, and look out for my client, and have my back." So, there's that. Ultimately we all know we need more attorneys. That's just what it is. So, I think the one thing is I know OPDC has a recruiter because they've reached out to me after they've hired on an attorney of mine or two asking for feedback. So, I know they have that. So, I think the access to something like that and maybe even recruiting insights that that recruiter might have. Things like that. But I understand there's a problem between in house and out of house, but the issue I have is when they're recruiting from in house out of my house. Then I don't have the ability to go... I mean recruiters are expensive. It's a whole salaried position for...

[Crosstalk 04:10:29]

Jennifer Nash: We had a [Inaudible 04:10:29] didn't make it.

Clint Oborn: Yeah. So, those are things...

Jennifer Nash: [Inaudible 04:10:36] cheap one, and it didn't make it into the budget.

Susan Mandiberg: And the other thing about reporting on good things that are happening... I understand that that would maybe not help the lawyers and the staff who are working in the office. Although people I think like to be congratulated on... I mean we had a presentation from [Inaudible 04:10:58] public defender, right? But it would give us the ability to give that message to the other people outside the system who matter. Right? If I'm talking to a legislator and I say, "Well, you know, public defenders do this, and they do that. And they help diminish recidivism because of the kind of work that they do with their clients." And their reaction is skeptical. "You're just trying to get guilty people out. What are you talking out." But if there are actual examples of how public defenders help public safety, that would go some way. We're all used to being considered not very much better than the clients we represent, and they don't consider our clients to be very good, even though we know that our clients are human beings who've had some bad luck or made bad decisions. Or haven't made decisions but are being accused of making bad decisions. We need help getting that message to the people who are funding us. They don't understand all that.

Clint Oborn: [Inaudible 04:12:26] I have an attorney in my office, and I think he's going to probably testify before the ways and means committee in a couple weeks.

Jennifer Nash: Perfect.

Clint Oborn: But he's worked there for about 30 years. And he and I were just... He can lay out like, "Hey, this is how much money I've saved the government. By being a public defender, I've saved this much money. Because instead of someone going to prison for something they didn't do, they got acquitted."

[Crosstalk 04:12:49]

Clint Oborn: "Instead of..." That's how we save money.

Jennifer Nash: That's right.

Clint Oborn: We save money by doing... Our job actually saves the government money if they pay attention to it.

Susan Mandiberg: That's a good message.

Clint Oborn: But it's as hard message to hear because people don't want to hear, "Well, they got acquitted. Well, that didn't save us money. You just let a criminal go." And so it's, "No, no, no. This is how the system works. And if you believe in the system then this is the step forward."

Susan Mandiberg: [Inaudible 04:13:11]

Clint Oborn: I'm sorry?

Susan Mandiberg: [Inaudible 04:13:12]

Clint Oborn: Yes. Yes. I also just... I appreciate all of your all's time, because I know it is a thankless job, and I know it's a lot of volunteer time on you all. And I just really appreciate you guys.

Susan Mandiberg: [Inaudible 04:13:27]

[Laughter]

Alton Harvey Jr.: [Inaudible 04:13:32]

Susan Mandiberg: Yeah.

Jennifer Nash: Mr. Scales, we have not heard anything from you.

Don Scales: I don't have a lot to say. Actually, I was planning on presenting anything. But I do have... I hope nobody thinks less of me. I might sound really obtuse with this question. And I may be kind of talking against my personal beliefs. When Judge Bloom was talking about the problem kind of started with the MAC. Now, I understand we got into the MAC because the sixth amendment [Inaudible 04:14:02] deemed unconstitutional to being paid by the case and what not. I guess this is a question that's been bothering me for a long time. Has there been a judicial determination that it's unconstitutional, or is this a sixth amendment centered determination that it's unconstitutional?

Jennifer Nash: Not in Oregon is the short answer. There was that case...I can't think of the name of...in Washington that basically yes, it's a denial. It's a sixth amendment denial of counsel when there is excessive caseloads and gave some really specific examples of what was happening in those cases that led to that...

[Crosstalk 04:14:39]

Don Scales: Okay, so there has been a judicial determination that...?

[Crosstalk 04:14:43]

Jennifer Nash: Yes, but not in Oregon.

Don Scales: Okay. Thank you for that. Getting to Judge Bloom's point... And once again, I don't want to be talking against myself. I can look at a case now and probably determine within a fairly finite period of time how the case is going to resolve, and that's just based on experience, having done it for 20-something years. I can't really efficiently... I didn't do it as efficiently in 1997 as I do in 2025. That being said, what I guess I'm saying... And once again, you're probably going to think I need to have my head examined. I probably could handle more cases because I have to say on a completely honest and completely candid level, the MAC has been wonderful for me because I feel more rested. I can put more time on my clients, more time on my cases. And I feel like I'm taking into the efficiencies that I've developed over these years and having that ability to not have to work with 140 cases on my caseload. I really don't know where I'm going with this because I'm kind of in favor of the MAC. But at the same time, I can see Judge Bloom's position.

Jennifer Nash: I hear you. And we've heard that before. And what we've heard is that experienced attorneys can take more cases than inexperienced attorneys.

Don Scales: Right.

Jennifer Nash: So, one of the policies we passed was really dealing with the inexperienced attorneys. And on the other end, it's difficult for nonprofit public defenders because it's a different entity.

Don Scales: Right.

Jennifer Nash: But certainly for consortia lawyers, they have the ability to take cases in excess of MAC if they can certify under oath that they have the ability to do that on a case by case basis. And so there has been some... That is happening, but it's not happening in the nonprofit sector because there's no good way to do that
[Inaudible 04:16:42]

Don Scales: What I can say just based on my experience when I was...when we were taking cases in 2016, 2017, we were taking just a humongous amount of cases, and ultimately we were compensated on the back end for it. And I have to say I didn't feel guilty when I put the check in the bank because I thought, "I did this work." But I did feel like, "Wow, we're getting paid a huge chunk of money." An overage I think is what it was called at the time. Obviously I'm not going to turn down the money because we did the work. But at the end of it, I thought to myself we were kind of treading water. We were grasping for air. There were so

many cases coming in. And you'd wake up at three in the morning thinking about, "I've got to do this. I've got to do this. I've got to do this." It was miserable. But ultimately, we made it to the other side. Getting back to a little bit more of my personal feelings, I think public defender offices are very much maybe not underappreciated, but I think we really need to focus on them because they're the training ground for all of the people that move on to the consortia or move on to the trial division.

They need to have as much in the way of compensation for people to do training and mentoring and all of those things. And quite frankly, once again, the 800-pound gorilla in the room, we need more money to attract people to get out of law school with \$150,000 in student loan debt to take whatever you get paid. I know you get paid less than DAs. I know DAs get paid less than attorneys general. But I think until we decide that attorneys general, if they are the gold standard, and everybody needs to be paid for doing basically the same work, we're never really going to see any movement. But once again, at the same time, I also understand the rock and the hard place that you're in between, trying... We have to be good to the legislature. We want to make them happy. We want them to fund us. And we don't want to upset them too much. So, I really didn't have any remarks, so I kind of blithered for a while here. But...

Jennifer Nash: Thank you.

Don Scales: ...I appreciate what everybody is doing. And I love my job. That's why... I used to think... I have an MBA in finance. I speak Mandarin and Chinese. I have a law degree. And I can go and do international business or whatever I want to do. But I've done this for 27 years, and I love it, and I wouldn't change it for a minute. So, that's my two cents.

Jennifer Nash: Thank you. Well, we really appreciate your time, and we really appreciate the open dialogue and the feedback. Please keep giving it because it's the single most useful thing I think that happens during these meetings [Inaudible 04:19:39]

John Hamilton: No, I'm good.

Jennifer Nash: Okay. All right.

[Laughter]

[Crosstalk 04:19:44]

Jennifer Nash: All right. Well, with that, we have a couple... I know we're running over. We have a couple things we need to do before we adjourn. Actually maybe just one thing that we need to do.

Jessica Kampfe: I think the only remaining thing on the agenda is the FCMS, which Mr. Martin does have slides as well that were submitted into the record [Inaudible 04:20:07]

Jennifer Nash: Yeah, I think that makes sense because I think that we need just a brief update of what's happening with FCMS. And then we can...

Peter Buckley: Do we have a quorum? [Inaudible 04:20:16]

[Inaudible 04:20:22]

Jennifer Nash: All right, Mr. Martin, I know we're running very behind, and people are anxious to start driving. And I don't want to put you on the spot, but I'm going to. If you could just...well, submit your slides. But if you could kind of give us the highlights of things that we need to know about what's happening, that would be great.

David Martin: Absolutely. Am I coming in okay?

Jennifer Nash: Yes, you are.

David Martin: All right. So, do you want me to present without slides and just speak in generalities?

Jennifer Nash: That would be wonderful, thank you. Yes.

David Martin: All right. Happy to do so. So, Chair Nash, Vice Chair Mandiberg, my name is David Martin. I'm the chief information officer and here to talk about the financial case management system. The real short version is we are in the procurement phase of the project. We have completed phase one of vendor evaluations where we have reviewed their written proposals, and we are moving into and have gone into...begun phase two of those evaluations which includes some RFP, request for proposal, addendums as well as scheduling vendors for the actual demonstrations. I expect that we will have the conclusion of those demonstrations completed in July, if I recall the schedule correctly. Looking through... I do have the print out of the slides in front of me, so I'm looking over my slides to make sure I'm not missing anything large here. We have the procurement schedule slides, if you review it later.

It does show some dates beyond the phase two evaluation. It does go out, and I want to just say that we will be revising the schedule once we have an idea of who the vendor is. The selection of that vendor is going to impact highly variably to the schedule itself. And so we have just estimates on a schedule at this point. But what I can really promise out is a July milestone around those evaluations being completed. Looking at accomplishments, I think a lot of it is rehash. [Laughs] Oh, budget. We're finishing up the seasons of ways and means. The end of last month was when we present. We are still in close collaboration with LFO on budget projection documentation and what not. But we are still expecting to see budget funding approval determinations in June-July timeframe. And that's my presentation in a nutshell.

Jennifer Nash: Perfect. Thank you.

David Martin: Of course.

Jennifer Nash: Really appreciate it, and we really appreciate you waiting all this time to make your presentation even though we ran over time. So, thank you again.

David Martin: Of course.

Jennifer Nash: All right.

David Martin: Of course. Thank you.

Jennifer Nash: And with that... Thank you. And with that, unless there's anything else, I will adjourn the meeting. Mr. Harris, do you have anything to say? Commissioner Harris? No? All right. And with that, we'll adjourn the meeting. Thank you very much for your time, and thank you for your patience.